Lee Kuan Yew v Derek Gwyn Davies & Ors

HIGH COURT (SINGAPORE) — SUIT NO 3336 OF 1987
THEAN J
30 NOVEMBER 1989

Tort — Defamation — Whether words referred to plaintiff — Whether words defamatory — Use of word 'attack' as regards church — Construction of words — Defences — Qualified privilege — Fair comment — Fair-minded man — Prejudice and exaggeration of such person — Malice — State of mind of defendants — Right of reply to attack — Public interest — Damages — Aggravated damages — Factors to be considered — Damages against joint defendants — Defamation Act (Cap 75, 1985 Ed), s 8 — Constitution of the Republic of Singapore, art 14(1)(a)

In this action, the plaintiff claims against the defendants damages for libel in respect of statements contained in an article, published in the *Far Eastern Economic Review* ('the *Review*'). The plaintiff is the Prime Minister of Singapore, and the first defendant is the editor of the *Review*; the second defendant is the author of the article complained of, and the third and fourth defendants are publishers and printers respectively of the *Review*. The first, second and third defendants are not resident in Singapore.

On 21 May 1987, the Internal Security Department ('ISD') arrested and detained 16 persons in connection with a clandestine communist network. Of the 16 detainees, four were full-time workers of the Catholic Church and six were voluntary workers in the Church's organizations. As a result of press statements made by two priests on the arrests, a meeting took place between a team of officials of the Ministry of Home Affairs and the Archbishop. The Permanent Secretary informed the Archbishop that his priests should not make any statements and drew his attention to Father Patrick Goh's and Father Edgar D'Souza's public statements. He added that the arrests of the 16 persons were not aimed at the Church. The Archbishop was asked to restrain his priests from making statements to the press without knowing the facts. The plaintiff, who had read reports of the meetings between the officials of the Ministry of Home Affairs and the Archbishop and the joint statement of the Archbishop and his priests, and the accompanying letter of Father D'Souza, considered that the conduct of these priests would lead to a situation of a collision between the Church and the government. He therefore decided that the best course would be to meet lay leaders of the Church in order to convince them that the arrest of the 16 detainees was not an action against the Church and that the government was not against the Church. The Church delegation met the plaintiff at the Istana on 2 June 1987; with him were the minister, the Permanent Secretary and the director of the ISD. The minister in Parliament, in answer to questions, made a lengthy statement on D'Souza and, in particular, disclosed the latter's association with a lady lawyer. The Singapore newspapers reported the statements of the minister, and these reports led to D'Souza issuing another press statement. He faxed this second statement to the *Review* for the attention of Margaret Scott or Michael Malik, the second defendant. Accompanying the press statement were two additional documents: the first was headed 'A background to the detention without trial of community and church workers in Singapore by Edgar Kenneth D'Souza', second was a copy of p 11 of a letter written to the Vatican by the Archbishop. It was from these three documents that the second defendant wrote the article complained of ('the article'). It bore a prominent heading, 'New light on detentions', under which was a sub-heading 'Catholic priest answers Jayakumar's allegations'. The article dealt with the following topics; first, a reply by D'Souza to the minister's statements of him in Parliament; secondly, a report alleged to have been given by the Archbishop of the meeting of 2 June 1987 between the plaintiff and the Church delegation; thirdly, an account of the meeting of 3 June 1987 between the Archbishop and members of his delegation and three of the four priests, and, fourthly, the aftermath of the two meetings. In the article, there were two paragraphs to which the plaintiff took exception, which are as follows:

(1) 'De Souza reported: 'A member of the Church delegation said that it was hard to believe this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests'.'

(2) 'Yong also told the priests that as he was leaving the meeting accompanied by Lee, he was shown into a room where a press conference had been called without his knowledge. He reported that he felt 'cornered' and confirmed before television cameras that he had no way to disprove the statement signed by Cheng. But he also said that he had added: 'I will take things at their face value for now.' This sentence, however, was omitted from the statement as shown on state-run television and published in the *Straits Times*.

The court would refer to the first paragraph as para 9 and the second as para 11. The plaintiff complained that these two paragraphs were defamatory of him and instituted this action against the defendants claiming damages for libel. By the statement of claim, the plaintiff claims that the defendants falsely and maliciously published, of and concerning him as a person and of and concerning him as Prime Minister of Singapore and in relation to his conduct therein, the words complained of in the article which were defamatory of him and that the words viewed in the context of the article were understood to refer to him. He ascribes to each paragraph a natural and ordinary meaning of the words in the context of the article.

By their defence, the defendants deny that the words in both paragraphs referred to the plaintiff, bore the meanings respectively as alleged or any meanings defamatory of the plaintiff. In the alternative, they raise the defences of justification and fair comment. In the further alternative, they raise the defence of qualified privilege on the following basis: first, the exercise of the right of reply by D'Souza through the medium of the *Review* to the attack on him made by the minister in Parliament and, secondly, in the alternative, the duty of the defendants to provide information which the public of Singapore were entitled to receive on a matter concerning the relations between the government of Singapore and the Catholic Church. By his reply, the plaintiff joined issue with the defendants and averred that the defendants were actuated by express malice.

Held, giving judgment to the plaintiff and awarding damages, including aggravated damages:

(1) On the issue of identity, as the plaintiff's case is that an ordinary reader reading the article would reasonably understand the words to refer to him, the question is whether an ordinary reader reading the article would reasonably come to that conclusion. The test is an objective one. The ordinary reader must be fair-minded and not avid for scandal. He must not be duly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff. In considering this question, para 9 cannot be read in isolation and must be read in

context. An ordinary reasonable reader would note that the surrounding paragraphs refer specifically to the plaintiff. The reader would have ample grounds, and 'rational grounds', for such a conclusion, ie that the words referred to the plaintiff. Imputations which refer to him as the Prime Minister refer to him also as a person.

(2) The issue concerning the words complained of in para 9 is purely one of construction of the words. The proper approach is to consider what meaning the words would convey to ordinary reasonable persons using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words but includes any inferences or implications which could reasonably be drawn by such persons. The words complained of must also be read in the context of the whole article, and in particular the paragraphs immediately before and after para 9. The ordinary and natural meaning of para 9 conveyed to the ordinary reader is that the plaintiff had threatened to use the ISA powers against the four priests, and that threat was directed against the Catholic Church and, in particular, the four priests, and they are the real targets and not the 16 detainees who were merely used as scapegoats. The inferences the reader draws from these words are that the plaintiff was against the Catholic Church.

(3) The next question is whether the words are defamatory of the plaintiff. In the natural and ordinary meaning, the words impute dishonourable and discreditable conduct and motive on the part of the plaintiff; they impute an attack on the Catholic Church and a dishonourable and improper use by him of the powers under the Internal Security Act. Such imputations tend to bring the plaintiff into public odium and contempt and lower him in the estimation of right-thinking people in Singapore. This is especially so in Singapore which is a multi-racial and multi-religious society, where there is toleration of all forms of religious belief and worship. The words are plainly defamatory of him, both as a person and as the Prime Minister.

(4) The defendants sought to justify the meaning, namely, that the impression that the plaintiff had created was that the real target was not the persons detained, but rather the four priests. That is different from the sense and meaning in the second sentence, which is that the 16 detainees were merely scapegoats for the four priests who were the real targets. To a reasonable reader, the second sentence in para 9 conveys a much stronger meaning than that contended by the defendants. The defendants' plea of justification fails.

(5) A defendant in a defamation action is not obliged to ascribe a meaning to the words complained of. If he pleads justification, then he must show in his pleadings, either in a specific averment or in the particulars relied on, the meaning he seeks to justify. On the authorities, the court was of the view that the defendants are bound by their pleadings, and for this reason the court disallowed their counsel from cross-examining the plaintiff on matters with a view to establishing justification of a meaning distinct from that they had pleaded.

(6) As regards para 9, the next question, whether the words are a statement of fact or a comment, is one of fact, the answer to which depends on the nature of the imputation conveyed thereby and the context and circumstances in which the words were published. The test is whether an ordinary reasonable reader on reading the whole article would understand the words as a comment or a statement of fact. In the court's opinion, the words in para 9 stand out clearly as a comment. There is sufficient substratum of fact stated or indicated in the article to found the comment made in para 9.

(7) The last question is whether the comment is one made on a matter of public interest. The court had not the slightest doubt that the matter is one of public interest. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at what is going on, or what may happen to them or to others, then it is a matter of public interest on which everyone is entitled to make fair comment.

(8) It is clear to the court that on the evidence, Father Kang did not say the words as set out in para 9 which D'Souza reported that he said. What he said at the meeting was different from what was reported by D'Souza in para 9 in at least two material particulars: he did not refer to the threat by the plaintiff of the use of the powers under the Internal Security Act as 'an attack against the Church'; nor did he refer to the 16 detainees as 'scapegoats'. These words are crucial. In them lies the sting of the libel.

(9) In the circumstances, the immediate question is whether the defence of fair comment is still available to the defendants. The court adopted the objective test, ie could a fair-minded man honestly express the opinion on the proved facts? The essential element is the honest opinion of a fair-minded man, and in this connection every allowance or latitude is to be given for any prejudice and exaggeration entertained by such a fair-minded man. In applying the objective test in this case, it is necessary, first, to examine the material facts proved before the court and, secondly, to consider whether on those proved facts, a fair-minded man could honestly make the comment that was made.

(10) Having regard to the context in which the statement was made and the overwhelming countervailing facts, which have been proved, the court did not think that such a fair-minded man could honestly entertain the view or hold the belief that the statement the plaintiff uttered was 'an attack against the Church' and that 'the real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests'. In the court's judgment, a fair-minded man could not honestly hold the opinion and express the comment as set out in para 9. The comment therefore fails to satisfy the objective test as a fair comment.

(11) An essential requirement to the success of the defence is that the facts on which the comment is made must be truly stated so that readers may judge for themselves whether the comment was well founded. An examination of the facts proved in this case demonstrates clearly that the facts on which the comments were made were not truly stated in the article. There was no 'confrontation' between the Archbishop and the plaintiff. The meeting was not 'stormy'; and the signed statement by Vincent Cheng was not 'read' to the Archbishop. It is apparent that the facts stated in the article were culled from the documents faxed to the second defendant by D'Souza, that in writing the article the second defendant merely assumed that they were true.

(12) As for para 11, an ordinary reasonable reader in reading that paragraph would note the facts in the preceding paragraphs and as alleged in para 11. The word 'cornered' in the context of this paragraph connotes that the Archbishop was improperly pressurized and had been tricked into attending the press conferences. The words in para 11, excluding the last sentence, are defamatory of the plaintiff.

(13) As regards the justification of para 11, the defendants have not succeeded in proving justification of the allegations contained in their plea. They have not called the Archbishop to substantiate their allegations. There is also no evidence that the plaintiff had resorted to any trickery or improper pressure to

cause the Archbishop to attend the conference and make the statement which he made. Their defence of justification fails.

(14) As for fair comment, in the context of the article, an ordinary reasonable reader would have no hesitation in coming to the conclusion that that part of the paragraph was an imputation of fact and was not a comment. There was no sufficient substratum of facts on which to base the comment.

(15) A person who has been publicly defamed is entitled to reply to the defamation publicly, and such reply may be made through the press and is privileged. This privilege extends also to protect a newspaper which publishes the reply of the person defamed. The protection of a privileged occasion does not extend to statements which have no relevance to a reply to the attack or which are not in any way appropriate to the occasion. Paragraphs 9 and 11 are certainly not within the limits of what could be regarded as reasonable and necessary to enable D'Souza to defend himself against or to rebut the attack or any part thereof made on him by the minister. These paragraphs, in the court's opinion, contain extraneous and 'foreign' matters and are not covered by qualified privilege, and the words complained of are not protected.

(16) As regards qualified privilege based on the duty to provide information, it is now the general rule that the law does not recognize an interest in the public strong enough to give rise to a duty to communicate in the press. Privilege for publication in the press of information of general public interest is confined to cases where the publisher has a legal, social or moral duty to communicate it to the general public but does not cover information on matters of public interest where there is no such duty to publish. On the facts of this case, there is certainly no duty to communicate information of the kind contained in the article. The *Review* was reporting a hearsay account given at a private and confidential meeting between the Archbishop and members of the delegation. The matters which the *Review* reported in the article were also more than six months old.

(17) The court was entitled to look at events both before and after the publication to see if any or more of them cast any light on the issue. The defendants must have realized that D'Souza had a deep grievance against the government; that these documents were sent to them with a view to their writing and publishing a counter-attack on the government, and that the accounts given by him in the documents would not be objective or impartial and might well be materially untrue or inaccurate. No attempt, however, was made by either the first or the second defendant or anyone on behalf of the third defendants to verify any of the facts or matters provided by D'Souza. Both the first and second defendants accepted the documents at their face value; the second defendant composed and wrote the article, and the first defendant approved it and its publication. In this, they acted recklessly. In the court's judgment, the conduct of the first and second defendants is evidence of malice on their part.

(18) The court also found that there was a slant in the article against the plaintiff. Neither the first defendant nor the second defendant — particularly the latter — has come forward to explain why the article came to be written in the way it was written. In the absence of such evidence, the court can only say that their motive or intention was to make the article more anti-plaintiff and more adverse to and critical of him. Two days before the commencement of the trial, the third defendants also published a press release which repeated the libel two days before the trial. This publication reinforces the court's finding that the first and second defendants were actuated by express malice at the time of publication of the article.

(19) The fourth defendants are the printers and were not involved in writing or editing the article. They printed the article without verifying whether the contents thereof were true or false. There was an agreement subsisting between the third and fourth defendants whereby, amongst other things, the former would indemnify the latter against all liabilities arising from printing the *Review*. In effect, they have by agreement abandoned any attempt to exercise control on what they print. They are equated with a publisher who publishes materials or articles without considering or caring whether they are true or false. In that sense, they acted recklessly. In the court's judgment, the fourth defendants were also actuated or affected by express malice.

(20) In calculating the amount of damages, the court was entitled to take into consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and 'the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict'.

(21) Both paras 9 and 11 are grave libels on the plaintiff and cast serious imputations on him as a man and as the Prime Minister of Singapore. The libels appeared in a reputable and influential publication with worldwide circulation. There has been no apology for or retraction of either of the offending paragraphs. In view of the court's finding of express malice, the plaintiff is entitled to aggravated damages. The other relevant aggravating factor is the conduct of the defendants through their counsel in repeatedly attempting in the cross-examination to put to the plaintiff matters which have no relevance to the issues.

(22) The sum must represent the highest common factor, that is, the lowest sum for which any of the defendants can be held liable on this score. Having taken into account all the relevant matters, including the aggravating factors, the court held that a fair and reasonable sum as damages for the plaintiff is $230,000.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 139 of 1989.]

Cases referred to

1 *Morgan* v *Odhams Press Ltd* [1971] 1 WLR 1239 (folld)
2 *Rubber Improvement Ltd* v *Daily Telegraph Ltd* [1964] AC 234 (folld)
3 *Jones* v *Skelton* [1963] 3 All ER 952 (folld)
4 *Lucas-Box* v *Associated Newspapers Group plc* [1986] 1 WLR 147 (refd)
5 *Viscount De L'isle* v *Times Newspapers Ltd* [1988] 1 WLR 49 (refd)
6 *Prager* v *Times Newspapers Ltd* [1988] 1 WLR 77 (folld)
7 *Kemsley* v *Foot* [1952] AC 345 (folld)
8 *London Artists Ltd* v *Littler* [1968] 1 WLR 607 (refd)
9 *Lyon & Anor* v *The Daily Telegraph Ltd* [1943] 1 KB 747 (folld)
10 *Cherneskey* v *Armadale Publishers Ltd* (1978) 90 DLR (3d) 321 (not folld)
11 *Merivale* v *Carson* (1888) LR 20 QB 275 (folld)
12 *Silkin* v *Beaverbrook Newspapers Ltd* [1958] 1 WLR 743 (folld)
13 *Joynt* v *Cycle Trade Publishing Co* [1904] 2 KB 292 (refd)
14 *Joshua Benjamin Jeyaretnam* v *Goh Chok Tong* [1989] 3 MLJ 1 (folld)
15 *Adam* v *Ward* [1917] AC 309 (refd)
16 *Blackshaw* v *Lord & Anor* [1983] 3 WLR 283 (folld)
17 *Arnold* v *The King-Emperor* (1914) 41 IA 149 (folld)

18 *Camporese* v *Parton* (1983) 150 DLR (3d) 208 (distd)
19 *Egger* v *Viscount Chelmsford & Ors* [1965] 1 QB 248 (follD)
20 *Pearson* v *Lemaitre* (1843) 5 M & G 700; 134 ER 742 (follD)
21 *Macleod* v *Wakley* (1828) 3 C & P 311; 172 ER 435 (follD)
22 *Horrocks* v *Lowe* [1975] AC 135 (follD)
23 *Cassell & Co Ltd* v *Broome* [1972] AC 1027 (follD)
24 *JB Jeyaretnam* v *Lee Kuan Yew* [1971] 2 MLJ 282 (refd)
25 *Lee Kuan Yew* v *Seow Khee Leng* [1989] 1 MLJ 172 (refd)

Legislation referred to
Defamation Act (Cap 75, 1975 Ed) s 8
Constitution of the Republic of Singapore art 14(1)(a)

John Previte QC (*Tan Kok Quan* with him) for the plaintiff.
Geoffrey Robertson QC (*Howard Cashin* with him) for the defendants.

Cur Adv Vult

Thean J: In this action, the plaintiff claims against the defendants damages for libel in respect of statements contained in an article, headed 'New light on detentions', published in the issue of the *Far Eastern Economic Review* ('the *Review*') for 17 December 1987. The plaintiff is the Prime Minister of Singapore, and the first defendant is the editor of the *Review*; the second defendant is the author of the article complained of, and the third and fourth defendants are publishers and printers respectively of the *Review*. The first, second and third defendants are not resident in Singapore.

Facts

Before I turn to the article complained of, it is necessary to set out in some detail the relevant events that occurred prior to the publication of the article; some of these occurred long before the publication. For my purpose, I take as a starting point the meeting that took place on 9 July 1986 between a team of officials of the Ministry of Home Affairs, headed by BG Tan Chin Tiong, the Permanent Secretary ('the Permanent Secretary') and Archbishop Gregory Yong, the Archbishop of Singapore ('the Archbishop'). At that meeting, the Permanent Secretary conveyed to the Archbishop the government's concern of the involvement of Catholic activists in political issues. Principally, the complaint of the Ministry was that certain Catholic priests and leaders had been making use of the *Catholic News*, which is a periodical publication of the Church, to ventilate their views and criticisms on political, public and other issues unconnected with the Church or the Catholic faith. The Archbishop was reminded that the *Catholic News*, of which he was the publisher, was issued a permit to publish news and articles concerning the Church or the Catholic faith and it should therefore confine itself to publishing such matters and not articles on non-religious and controversial issues. The Archbishop was told that if the *Catholic News* continued 'to dabble' in political issues, the government would have to consider withdrawing the permit. He was then informed of the activities of three priests, namely, Father Guillaume Arotcarena, Father Edgar D'Souza and Father Patrick Goh, and their involvement in political issues. He was also briefed on the activities of the organization of the Church called Justice Peace Commission, and of one Vincent Cheng, the executive secretary of the organization.

After the meeting with the team of officials, the Archbishop also met Professor Jayakumar, the Minister for Home Affairs ('the minister'). The minister informed the Archbishop that there was a cause for serious concern, because certain Catholic activists were mixing religion with politics and using religious institutions and media to exert political pressure on the government. He said that it was a dangerous course of action for the activists to make use of the Church for the purpose of political agitation against government policies; this the government would not tolerate. The minister also expressed the view that it was undesirable to have a confrontation between the Church and the state.

In November 1986, His Holiness Pope Paul II visited Singapore, and accompanied by the Archbishop and Archbishop Martino, the Holy See Ambassador to Singapore, he called on the plaintiff. They discussed generally geopolitical developments in various areas. Towards the end of the discussion, the plaintiff mentioned to the Pope the behaviour and activities of some priests in Singapore and their use of the church as a cover to engage in anti-government campaign in a partisan manner, which he viewed with seriousness.

Then came an important event on 21 May 1987. On that day, the Internal Security Department ('ISD') arrested and detained 16 persons including Vincent Cheng, in connection with a clandestine communist network. Of the 16 detainees, four were full-time workers of the Catholic Church and six were voluntary workers in the Church's organizations. After the arrests, Father Patrick Goh made a statement to the BBC radio on 22 May 1987, in which, he said, amongst other things, that he 'could personally vouch for the four arrested church workers and could think of no reason for their detention, which he described as 'ridiculous''. On the same day, Father Edgar D'Souza made a statement which was reported in the Reuters report and in the Malaysian newspaper *The Star* — the latter published it on 23 May 1987 — in which he was quoted as the 'spokesman for the Roman Catholic Church' and in which he denied that the four were communists and said that he had known Vincent Cheng for 20 years; he ridiculed any notion of Vincent Cheng being a communist. As a result of these press statements, a meeting took place in the afternoon of 23 May 1987 between a team of officials of the Ministry of Home Affairs (led by the Permanent Secretary) and the Archbishop. The Permanent Secretary informed the Archbishop that his priests should not make any statements and drew his attention to Father Patrick Goh's and Father Edgar D'Souza's state-

ments. He added that the arrests of the 16 persons were not aimed at the Church. The Archbishop said that these statements were made without his knowledge and agreed that until full facts were revealed, the Church should not make any statements. Further discussions took place, and the Archbishop was assured that the government was not harassing the Church and that those who were arrested not as Church members but for something else. At the conclusion, he was asked to restrain his priests from making statements to the press without knowing the facts.

Three days later, on 26 May 1987, the Permanent Secretary (with the Deputy Secretary) met the Archbishop again. The Archbishop was then briefed on a press statement of the government which would be appearing in the newspaper on the following day. That statement concerned the detainees and their activities and more particularly Vincent Cheng and the role played by him. The Archbishop read the statement and the addendum on Vincent Cheng. The minister later joined the meeting; he reminded the Archbishop of the meeting in July 1986 and informed the Archbishop that action was taken because the individuals had continued their subversive activities and that the action taken was against the individuals and not the Church. The Archbishop was referred again to the statements made by his priests, and as the head of the Church he was requested not to allow this to carry on. He must exercise control over his priests. The Archbishop assured the minister that the Church had no intention whatsoever of clashing with the government. At the conclusion of the meeting, the Archbishop said that he was convinced, on the basis of what he had read, that the government had reasons for its actions; his problem was one of convincing his priests, and he assured the minister that the Church would not act hastily.

Unfortunately, on the following day, 27 May 1987, Father D'Souza made yet another statement. This time it was to the BBC radio in which he said he found it hard to believe that any of the four full-time Church workers, who were amongst the 16 arrested, were involved, as the government stated, in a clandestine communist network, and he called on the government to make available for public scrutiny any evidence or proof it had to back up its allegations. He also prepared a press statement containing, amongst other things, what he said to the BBC radio and this statement was published in *The Star* on 28 May 1987.

In consequence of Father D'Souza's statement, a further meeting took place on 27 May 1987 between the Permanent Secretary (together with the Deputy Secretary and the director of ISD) and the Archbishop. The Archbishop was reminded of what he was told at the last two meetings, and in reply the Archbishop said that Father D'Souza did not represent the Church when he made those statements. He promised that he would stop Father D'Souza from making further statements. At that meeting, the Archbishop was shown documents taken from Vincent Cheng and other material. The Archbishop then said that on the basis of the information that had been shown he could not dispute the facts. He informed those present that there would be a meeting with his priests on the following day to discuss the matter, and after that an official statement would be made, which, he assured them, would include a statement that he was satisfied that the action of the government was not directed against the Church.

Accordingly, on 28 May 1987, there was a meeting between the Archbishop and his priests, and following that meeting, a joint statement was issued, signed by the Archbishop, and was expressed to be a response to the press statement issued by the Ministry of Home Affairs of 26 May 1987 regarding the investigation into the clandestine communist network, and the arrest and detention of the 16 persons on 21 May 1987. The joint statement mentioned that four out of the 16 persons were full-time workers of the Church and that, in addition, six were voluntary workers in some Church's organizations. Contrary to the assurance given by the Archbishop, it did not contain a statement that the Archbishop was satisfied that the action of the government was not directed against the Church. Far from containing such statement, it stated that the Archbishop and his priests were greatly perturbed at the arrests and the Ministry's statement, and expressed their concern for those detained and their respective families and, amongst other things, said:

> The Catholic Church, however, must continue its mission of spreading its teachings on matters pertaining to justice as they apply to social, economic and political issues.
>
> To the best of our knowledge, the full-time workers have been fully committed to the work of the Catholic organization in which they served.
>
> The six voluntary workers have generously contributed their time and talents to specific work in the Catholic organization with which they were associated.

Accompanying the joint statement was a letter written by Father D'Souza in his capacity as a press liaison officer of the Archdiocese of Singapore which said, amongst other things, that the Archbishop would not be available for any comment and that all he and his priests wished to say at the time was contained in the joint statement.

The plaintiff, who had read the reports of the meetings between the officials of the Ministry of Home Affairs and the Archbishop, and who had also read this joint statement and the accompanying letter of Father D'Souza, considered that the conduct of these priests would lead to a situation of a collision between the Church and the government. A decision had to be taken to defuse the situ-

ation. He therefore decided that the best course would be to meet lay leaders of the Church in order to convince them that the arrest of the 16 detainees was not an action against the Church and that the government was not against the Church. He spoke to Dr Ee Peng Liang, who is an old friend of his and a Catholic lay leader. Dr Ee suggested that he should meet the Archbishop, the priests and lay leaders, to which the plaintiff agreed. Immediately following this conversation, Dr Ee got in touch with the Archbishop and thereafter reverted to the plaintiff reporting that a delegation led by the Archbishop would meet the plaintiff. That was on 31 May 1987, and a meeting was arranged for 2 June 1987. The names of the members of the delegation, totalling 19, were submitted, of which three names were deleted by Dr Ee as unacceptable and six by the ISD. The delegation from the Church eventually consisted of the Archbishop, six priests and three lay leaders including Dr Ee Peng Liang.

At or about the same time as that meeting was being arranged, the plaintiff decided to keep the Vatican informed of the situation that had arisen. He wanted to do this through the Apostolic Pro'Nuncio, Archbishop Renato Martino, who was present at the meeting in November 1986 when His Holiness Pope John Paul II visited Singapore. The government then got in touch with the Vatican embassy in Bangkok and was told that Archbishop Martino had been transferred to the United Nations. Accordingly, an aide memoire from the Ministry of Home Affairs was sent to Archbishop Martino at the United Nations where Archbishop Martino was the Permanent Observer on behalf of the Holy See. The government then asked the charge d'affaires of the Holy See in Bangkok, the Reverend D'Aniello to come to Singapore. He arrived on 1 June and a meeting between the Reverend D'Aniello and the plaintiff was arranged also for 2 June 1987.

The Church delegation met the plaintiff at the Istana in the afternoon of 2 June 1987; with him were the minister, the Permanent Secretary and the director of ISD. Before the meeting commenced, each member of the delegation was given a folder containing statements made by Vincent Cheng and documents implicating four priests, namely, Fathers Patrick Goh, Arotcarena, Edgar D'Souza and Joseph Ho, and eight of the ten Catholic workers who were amongst the 16 arrested. After they had read the documents the meeting started; that was about 3pm. I shall later have occasion to set out in greater detail what the plaintiff said at the meeting; for the present purpose a brief account would suffice. The plaintiff explained the purpose of the meeting and referred to his discussion with Dr Ee in which he said that the government and the Church were on a collision course. He explained to the delegation that if the Church leaders knew the facts the Church would withdraw from the present collision course with the government. He told them his concern over the involvement of several priests, and that the Archbishop had been told about them in July 1986. The Archbishop was reminded of the previous meetings with officials of the Ministry of Home Affairs and of the positions which he took at those meetings. In response, the Archbishop said he was not informed that the Catholic priests had links with communists and were using the Church; he was merely informed that they were involving themselves in socio-political issues. He then proceeded to read a long statement from a prepared text, the gist of which was that the Church was not in conflict with the government; that it was concerned with human rights and the innocence of the detainees and that the government had an obligation to show that the detainees were a threat to security. The plaintiff reminded the Archbishop of the positions the latter took at the previous meetings with the Ministry's officials, and pointed out that the Archbishop had now come forward with a totally new position. The plaintiff asked for notes of previous meetings to be distributed to the Church delegation and left them to read the documents. That was about 3.30pm.

The plaintiff then met the Reverend D'Aniello as previously arranged. The plaintiff briefed the Reverend D'Aniello of the situation which had arisen and explained his thoughts on the relation between the Church and the government. The Reverend D'Aniello said that he knew the problems and asked whether the plaintiff would be doing something about the priests. The plaintiff said it was better for the Vatican to deal with them as it involved clerics. But he wanted to stop the priests from further mischiefs, and the Reverend D'Aniello said that he would tell the Archbishop to stop the priests' activities. Further discussions took place, in the course of which the plaintiff suggested that the Reverend D'Aniello could make a statement to the effect that he was satisfied that the action by the government was not against the Church. To this, the Reverend D'Aniello said that the Archbishop was the head of the Church here and that the Vatican would want him to make the statement. The Reverend D'Aniello said he would see the Archbishop, to which the plaintiff said he would provide a room for them to meet and discuss.

After that meeting, the plaintiff returned to meet the Church delegation and continued discussions with them. The plaintiff said that the government would produce evidence against the other detainees as they had done in the case of Vincent Cheng, and reiterated that they were detained not because they were members of the Church. Just before the meeting concluded, the plaintiff mentioned to the delegation that the news of their meeting had been leaked out to the press and there was a report by Agency France Presse ('AFP') claiming that the plaintiff had asked for the meeting with the Archbishop and the nine Catholic Church representatives — which was not the position. He said that he would have to tell the press how the meeting came about. At the conclusion of the

meeting, the Church delegation, with the exception of the Archbishop, left.

The Archbishop then met the Reverend D'Aniello in a separate room; they were together for about half an hour. Following that was a meeting between the plaintiff, the Reverend D'Aniello and the Archbishop. At the commencement of this meeting, the plaintiff informed them that in view of the AFP report, he wanted the Archbishop to give the press the correct picture and therefore suggested that they should meet the press. To this the Archbishop suggested that he would issue a statement, which, however, the plaintiff regarded as being too formal. The AFP report was shown to the Archbishop. The plaintiff again suggested that they should go down and tell the press that they were satisfied with Vincent Cheng's case. The Reverend D'Aniello said it was clear to him that the government was not against the Church but against those who involved the Church in politics. Thereafter, a discussion ensued as to the statement to be made, and eventually the Reverend D'Aniello and the Archbishop between themselves settled a draft statement, which was in the following terms:

> We are satisfied that the government of Singapore has nothing against the Catholic Church when it detained ten of our Church workers amongst the 16 who were arrested for possible involvement in the clandestine communist network.
>
> The Reverend D'Aniello then left, and the plaintiff and the Archbishop went to the press conference together with the Minister and the director of ISD.

As regards the press conference, it was arranged in this way. Before meeting the Church delegation, the plaintiff had instructed his press secretary, James Fu, to arrange for the representatives of the press and Singapore Broadcasting Corporation ('SBC') to stand by for a press conference at the Istana. Presumably, he expected that at the conclusion of the meeting, it might be necessary to make statements to the press. Hence, the representatives of the press and the SBC were at hand that afternoon for the press conference.

At the press conference, the plaintiff explained the circumstances that led to the meeting between him and the Church delegation, and that at the meeting the Church delegation had read documents produced to them which disclosed that the government had reasons for its action and that the Church delegation could not dispute the facts. The Archbishop made a statement in terms of the draft previously settled. Thereafter, the plaintiff made further statements which were followed by questions from the press. The Archbishop was specifically asked whether he was convinced of the position, to which he replied: 'After going through the depositions made by the person concerned himself, I have no way of disproving his statement. I have no way. That is why I have to take things at their face value for the time being'.

On the following day, the Archbishop had a meeting with members of his Church delegations; also present at the meeting were Fathers D'Souza, Patrick Goh and Arotcarena. At this meeting, the Archbishop asked for views of the various members of the Church delegation on the meeting of 2 June 1987 with the plaintiff. It was there that, according to the defendants, one of the priests, Father Joachim Kang, spoke the words reported by Father D'Souza and quoted in one of the paragraphs of the article complained of, to which I shall advert shortly.

On the following day, 4 June 1987, the Archbishop issued a press release stating that he had accepted the resignations of Fathers Ho, Goh, D'Souza and Arotcarena from their positions to which he had appointed them in the archdiocese. On 5 June 1987, D'Souza left Singapore for Australia where he is now residing.

In Australia and New Zealand, D'Souza continued to make statements relating to the arrests and detentions of the 16 detainees and appeared to have obtained wide publicity for his views. The Singapore newspaper carried reports of D'Souza. On 29 November 1987, D'Souza issued a press statement 'in the light of various reports in the Singapore *Straits Times*' concerning his work and his personal life, and a copy of this statement was sent to the *Review*. Following this, on 30 November 1987, the minister in Parliament in answer to questions, made a lengthy statement on D'Souza and, in particular, disclosed the latter's association with a lady lawyer. I shall have occasion shortly to refer to this statement in some detail; for the moment it is sufficient to say that it was a grave attack on D'Souza and sought to expose his moral duplicity and impeach his credibility. The Singapore newspapers reported the statements of the Minister, and these reports led to D'Souza issuing a second press statement on 2 December 1987, which was intended by him to supersede his earlier statement. He faxed this second statement to the *Review* for the attention of Margaret Scott or Michael Malik, the second defendant. Accompanying the press statement were additional documents: the first was headed 'A background to the detention without trial of community and church workers in Singapore by Edgar Kenneth D'Souza', and the second was a copy of p 11 of a letter written to the Vatican by the Archbishop. Again, I shall have occasion later to refer to this press statement and the two accompanying documents in some detail; suffice it here to say that it was from these three documents that the second defendant wrote the article complained of.

I now come to the article complained of ('the article'). It was published in the issue of the *Review* for 17 December 1987; it bore a prominent heading, 'New light on detentions', under which was a sub-heading, 'Catholic priest answers Jayakumar's allegations', and consisted altogether of 15 paragraphs. The article dealt with the

following topics; first, a reply by D'Souza to the Minister's statements of him in Parliament; secondly, a report alleged to have been given by the Archbishop of the meeting of 2 June 1987 between the plaintiff and the Church delegation; thirdly, an account of the meeting of 3 June 1987 of the four priests, and, fourthly, the aftermath of the two meetings. In the article, there were two paragraphs to which the plaintiff took exception, namely, paras 9 and 11, which are as follows:

(a) De Souza reported: 'A member of the Church delegation said that it was hard to believe this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests.'

(b) Yong also told the priests that as he was leaving the meeting accompanied by Lee, he was shown into a room where a press conference had been called without his knowledge. He reported that he felt 'cornered' and confirmed before television cameras that he had had no way to disprove the statement signed by Cheng. But he also said that he had added: 'I will take things at their face value for now'. This sentence, however, was omitted from the statement as shown on state-run television and published in *The Straits Times* newspaper.

I shall refer to the first paragraph as para 9 and the second as para 11. The plaintiff complained that these two paragraphs were defamatory of him and on 31 December 1987 instituted this action against the defendants claiming damages for libel.

Issues

By the statement of claim (which was subsequently amended and re-amended) the plaintiff claims that the defendants falsely and maliciously published, of and concerning him as a person and of and concerning him as Prime Minister of Singapore and in relation to his conduct therein, the words complained of in the article which were defamatory of him and that the words viewed in the context of the Article were understood to refer to him. He ascribes to each paragraph a natural and ordinary meaning of the words (which I shall set out in detail shortly) in the context of the article. By their defence (which was subsequently amended and re-amended), the defendants deny that the words in both paragraphs referred to the plaintiff, bore the meanings respectively as alleged or any meanings defamatory of the plaintiff. In the alternative, they raised as against each paragraph separately, the defences of justification and fair comment. In addition, and in the further alternative, in relation to both the paragraphs, they raise the defence of qualified privilege on the following basis; first, the exercise of the right of reply by D'Souza through the medium of the *Review* to the attack on him made by the minister in Parliament on 30 November 1987, and, secondly, in the alternative, the duty of the defendants to provide information which the public of Singapore were entitled to receive on a matter concerning the relations between the government of Singapore and the Catholic Church. By his reply (which was also subsequently amended and re-amended), the plaintiff joins issue with the defendants and avers that the defendants were actuated by express malice. In order to avoid duplication, I have not, at this stage, set out the pleadings in any detail, but shall do so where necessary in the course of considering the issues before me. Suffice it here to mention that no less than nine issues have been raised by the pleadings, and they are as follows:

I In respect of para 9:

1 the natural and ordinary meaning of the words complained of in the context of the article, and in that connection, two other questions arise; (i) whether the words referred to the plaintiff, and (ii) whether the words were defamatory of the plaintiff;

2 the defence of justification as pleaded by the defendants; and

3 the defence of fair comment as pleaded by the defendants.

II In respect of para 11:

4 the natural and ordinary meaning of the words complained of in the context of the article and in that connection also two other questions arise: (i) whether the words referred to the plaintiff, and (ii) whether the words were defamatory of the plaintiff;

5 the defence of justification as pleaded by the defendants; and

6 the defence of fair comment as pleaded by the defendants.

III In respect of both paras 9 and 11:

7 the defence of qualified privilege on the basis of the exercise by D'Souza of his right of reply;

8 the defence of qualified privilege on the basis of a duty to provide information which the public are entitled to receive; and

9 whether any one of the defendants was actuated by express malice in respect of the publication of the article.

In addition, if the plaintiff succeeds in his claim in respect of both or either of the two paragraphs, there will be a further issue, namely, the assessment of damages. I now turn to consider the issues seriatim in the order as I have set out.

Meaning of para 9

On this issue, the first point to be considered is one of identity, as the words complained of made no express or specific reference to the plaintiff. 'It is always for the plaintiff to prove that the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of

action' — per Lord Donovan in *Morgan* v *Odhams Press Ltd*[1] at p 1263. The plaintiff is not relying on any evidence extrinsic to the article, such as evidence of readers testifying that after reading the article, they understood that the words complained of in para 9 referred to the plaintiff. His case is that an ordinary reader reading the article would reasonably understand the words to refer to him. So the question is whether an ordinary reader reading the article would reasonably come to that conclusion. The test is an objective one, and in this respect, the following passage from the speech of Lord Guest in *Morgan* v *Odhams Press Ltd*[1] at p 1261 is helpful:

> But here the question is not whether the words are defamatory. It is conceded that they were, if they refer to the appellant. The question is one purely of identity. 'Are the words capable of being understood to refer to the appellant?' In my view, a somewhat more exacting test should be predicated where the question is one of identity. It is not sufficient for the reader to say 'I wonder if the article refers to Johnny Morgan' nor is pure speculation sufficient. Nor is it sufficient that a reasonable person believes that the words refer to the plaintiff. The test is an objective one. The ordinary reader must be fair-minded and not avid for scandal. He must not be unduly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff.

Plainly, in considering this question, para 9 cannot be read in isolation; it must be read in the proper context in which it was set out. For this purpose it is necessary and convenient at this stage to set out, in so far as relevant, those parts of the article preceding and succeeding not only para 9 but also para 11, as the same question will arise later in connection with the latter paragraph. For easy reference, I number them numerically (as they appeared in the article), and these paragraphs are as follows:

> [6] D'Souza said this followed a stormy meeting on 2 June — after the detention of a first batch of 16 people, mostly associated with church organizations — between Lee and Yong and a party of ten church officials from which D'Souza and eight others who knew or worked with some of those detained, had been specifically excluded by the government. D'Souza said that an account of this meeting was given to all available Singapore priests by Yong the next day.
>
> [7] Before the meeting with Lee, Yong was read a signed statement by Vincent Cheng, accused as the organiser of the alleged Marxist conspiracy, which Yong said confirmed government allegations and implicated four priests, including D'Souza, in a plot to use the church to further Marxist interests. When Yong said he had not been warned of such 'subversive activities', Lee produced transcripts of three meetings between the archbishop and officials of the Ministry of Home Affairs between December 1985 and July 1986 at which concern had been expressed over the church's Justice and Peace Commission and the *Catholic News* publication, in both of which D'Souza was involved. Yong expressed surprise at the transcripts since there had been no secretary or tape-recorder visible at the meetings.
>
> [8] While Yong was saying that he felt the government should prove its case against the detainees 'in toto', Lee 'often looked at his watch and at one stage interrupted and asked how much longer Yong needed,' D'Souza said. Lee was forceful in his assertion that a collision between church and state appeared inevitable and would not be good for either. He said that he was ready to use the powers of the Internal Security Act if deemed necessary, if Yong could not put his own house in order.
>
> [9] D'Souza reported: 'A member of the Church delegation said that it was hard to believe this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests.'
>
> [10] According to D'Souza, Yong told the church meeting that Lee said that Tan Wah Piow, the alleged exiled leader of the 'conspiracy', was a simpleton. He said he did not know if Tan was a communist and anyway he was outside Singapore's jurisdiction. The other 16, Yong quoted Lee as saying, were 'stupid novices but could be controlled from outside.'
>
> [11] Yong also told the priests that as he was leaving the meeting accompanied by Lee, he was shown into a room were a press conference had been called without his knowledge. He reported that he felt 'cornered' and confirmed before television cameras that he had had no way to disprove the statement signed by Cheng. But he also said that he had added: 'I will take things at their face value for now.' This sentence, however, was omitted from the statement as shown on state-run television and published in *The Straits Times* newspaper.
>
> [12] At the church meeting the next day, Yong then told the priests under attack: 'The PM [Lee] will not arrest you because you are priests but because of your 'other activities'. In that case there would be nothing we can do for you.' According to D'Souza, one of the priests asked Yong if he did not think they were doing church work. Yong replied: 'it is not what I think, but what they [the government] think'.

Paragraphs 6, 7, 8 and 10 described the meeting between the plaintiff and the Church delegation on 2 June 1987 and there were express references in these paragraphs as to what the plaintiff did and said, and even as far down as paras 11 and 12 was the plaintiff specifically referred to. An ordinary reasonable reader on reading para 7 would have noted that that paragraph specifically described what the plaintiff did, and when the reader comes to para 8 he would have noted that the plaintiff was said to be impatient and was forceful in his assertion that a collision between the Church and the state appeared inevitable and would not be good for either of them. Immediately following this, the reader comes to the crucial sentence, which was to the effect that the plaintiff was ready to use the powers under the Internal Security Act if deemed necessary, if the Archbishop could not put his house in order. The reader then proceeds to para 9 where there was no mention of the plaintiff. And immediately following are paras 10, 11 and 12 where again the plaintiff was specifically mentioned. In the context of these paragraphs, can there be any doubt that the words complained of in para 9 would be understood by an ordinary reader — a fair-minded reader 'not avid for scandal' and 'not unduly suspicious'— to refer to the plaintiff? I think not. I think

that applying the somewhat more exacting test laid down by Lord Guest, such a reader would have ample grounds, and 'rational grounds' they are, for such a conclusion, ie that the words referred to the plaintiff.

Mr Robertson for the defendants conceded that the words in para 9 referred to the plaintiff in a limited and indirect way; the words referred to him only as Prime Minister of Singapore and leader of his government and not to him personally. I am unable to accept this contention. I agree with Mr Previte for the plaintiff that an ordinary reasonable reader would understand the words in para 9 to refer to the plaintiff as a person and as the Prime Minister. Imputations which refer to him as the Prime Minister refer to him also as a person. There is no such subtle distinction in the article as contended.

I have therefore no hesitation in coming to the conclusion that an ordinary reader would reasonably understand the words complained of in para 9 to refer to the plaintiff, and that that paragraph was published of and concerning the plaintiff as a person and of and concerning him as the Prime Minister and in relation to his conduct.

I now turn to consider the natural and ordinary meaning of the words complained of in para 9 in the context of the article. The plaintiff in the statement of claim pleaded that the words complained of in para 9 meant and were understood to mean in their natural and ordinary meaning in the context of the article 'that the plaintiff had authorized or connived at the arrest and detention of 16 people associated with the Catholic church in Singapore, does not favour freedom of religious belief and worship, and desires to victimize Catholic priests and Catholic workers'. The defendants deny that the words bore such meaning or any meanings defamatory of the plaintiff, and further, in their plea of justification, they ascribe to the words a meaning which they seek to justify. Under para 5 of the defence, they pleaded that the words complained of in para 9 'meant and were understood to mean in their natural and ordinary meaning in the context of the said article that the plaintiff, in the course of meeting the Church delegation on 2 June 1987, had severely criticized the Church and had given the impression that the real target of his government was not the persons it had already detained, but rather four priests it regarded as subversive and whose activities in relation to Catholic organizations and publications the Archbishop had been previously warned not to tolerate'. These then are the rival contentions as to the natural and ordinary meaning of the words in the context of the article, and the question is whether the words bear the meaning contended by the plaintiff or that contended by the defendants or other meaning.

The issue is one purely of construction of the words, but the rules of construction applicable in construing a contract or a will are not appropriate for the purpose. The proper approach is to consider what meaning the words would convey to ordinary reasonable persons using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words but includes any inferences or implications which could reasonably be drawn by such persons: see para 4.04 of *Duncan and Neill on Defamation* (2nd Ed). In construing the natural and ordinary meaning of words, broad principles have been authoritatively laid down. Lord Reid in *Rubber Improvement Ltd* v *Daily Telegraph Ltd*[2] at p 258 said:

> The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. ...
>
> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

In the same case, Lord Devlin at the commencement of his speech, at p 277, said:

> My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.

In language similar to that used by Lord Reid, Lord Morris of Borth-y-Gest in *Jones* v *Skelton*[3] said, at p 958:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis* v *Daily Telegraph, Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

The words complained of in para 9 must be read in the context of the whole article and, in particular, in the

context of paras 6, 7, 8 and 10; the context dictates the meaning of the words. An ordinary reader upon reading these paragraphs would have noted that there was a meeting between the plaintiff and a Church delegation: para 6; that before the meeting the Archbishop 'was read' a signed statement by Vincent Cheng confirming government's allegations and implicating four priests including D'Souza in a plot to use the Church to further Marxist interests, and transcripts of three meetings between the Archbishop and officials of Ministry of Home Affairs which took place between December 1985 and July 1986 were produced: para 7; that the plaintiff was impatient with the Archbishop while the latter was saying that the government should prove its case against the detainees, and that the plaintiff was forceful in his assertion that a collision between the Church and the state appeared inevitable and that he was ready to use the powers of the Internal Security Act if deemed necessary, if the Archbishop could not put his own house in order: para 8. The reader then comes to para 9 and reads 'A member of the Church delegation said that it was hard to believe that this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests'. Now, the words that strike him are 'attack against the Church', 'the real target', 'the 16 [detainees] who were merely scapegoats' and 'the four priests'. He is then confronted with the word 'this', and he would have to understand what 'this' means. Having just read the paragraph immediately preceding, and in particular the last sentence of that paragraph, he would have at the forefront of his mind what the plaintiff had said, namely, he was ready to use the powers under the Internal Security Act if deemed necessary, if the Archbishop could not put his own house in order. An ordinary reader would understand that statement as a threat and that threat was directed against the four priests implicated in Vincent Cheng's statement. Hence, to the reader the word 'this' would inescapably relate to and mean the threat. The ordinary and natural meaning of para 9 conveyed to him is that the plaintiff had uttered that threat, and that threat was directed against the Catholic Church and, in particular, the four priests, and they are the real targets and not the 16 detainees who were used merely as scapegoats. The inferences the reader draws from these words are that the plaintiff was anti-Catholic Church: he attacked the Church and, in particular, the four priests, and that he had caused or connived at the arrest and detention of the 16 detainees who were merely used as scapegoats, and that the real target was the four priests. In my judgment, to an ordinary reasonable reader, such is the natural and ordinary meaning of the words complained of in para 9.

The meaning I have found is not exactly that as contended by the plaintiff; in particular, I am unable to agree to the wide inferential meaning contended on his behalf, namely, that the plaintiff does not favour freedom of religious belief and worship and desires to victimize Catholic priests and Catholic workers. For the reasons which I shall give shortly, when I consider the defence of justification, I am also unable to agree that the words bear the meaning ascribed to them by the defendants.

I now turn to the question whether the words are defamatory of the plaintiff. In the natural and ordinary meaning which I have found, the words impute dishonourable and discreditable conduct and motive on the part of the plaintiff; they impute an attack on the Catholic Church and a dishonourable and improper use by him of the powers under the Internal Security Act, ie he caused or connived at the arrest and detention of 16 persons as scapegoats for the four priests who were the real targets. The sting lies in the suggestion of an 'attack against the Church' and the detention of the 16 detainees as 'merely scapegoats' for the four priests. Such imputations tend to bring the plaintiff into public odium and contempt and lower him in the estimation of right-thinking people in Singapore. This is especially so in Singapore which is a multi-racial and multi-religious society, where there is toleration of all forms of religious belief and worship. The words are plainly defamatory of him, both as a person and as the Prime Minister.

Justification of para 9

As I have just considered the natural and ordinary meaning of the words complained of in para 9, it is convenient at this point to deal with the defence of justification as pleaded by the defendant. This defence was raised by the defendants at a very late stage. How they came to set up this plea appears to be this. From the time when the plaintiff first complained of the article until 25 August 1989 — just one month before the commencement of the trial — the defendants' case had been that the words complained of were fair comment on a matter of public interest. That was then the only defence raised. In support of this defence, they pleaded particulars of the facts on which the comment was said to be based, and on that basis they were entitled to obtain and did obtain discovery of documents in the plaintiff's possession. Having examined the documents, they then applied for leave to amend the defence by incorporating, inter alia, a plea of justification. The deputy registrar who heard the application on 25 August 1989 refused leave, and they appealed to the judge in chambers. Chan Sek Keong J, who heard the appeal, dismissed it, and immediately upon the order being made by the learned judge, Mr Cashin for the defendants orally applied for leave to amend the defence by incorporating another plea of justification, which was a simple one, namely, that the words complained of were true in substance and in fact, and the defendants relied on the particulars previously given. The learned judge allowed a short adjournment to enable Mr Tan for the

plaintiff to consider the matter. Prior to the resumed hearing, the defendants' solicitors, in their letter to the plaintiff's solicitors, restated the proposed plea of justification with a slight variation. However, at the resumed hearing, the defendants' counsel then put forward a revised plea of justification, which was opposed by Mr Tan and was disallowed by Chan Sek Keong J. The learned judge then granted to counsel for the defendants a very short adjournment to re-draft the plea of justification which the defendants wished to put forward. Both counsel then went back to the learned judge, and, not lacking in ingenuity, counsel for the defendants came up with a new form of plea. The learned judge after hearing arguments allowed the defendants to put in a plea of justification with some amendments directed by him. Subsequently, that again did not appear to be satisfactory to the defendants, and on 21 September 1989 — four days before the commencement of the trial— Mr Robertson applied to me for leave to re-amend the defence by incorporating, inter alia, what is now para 5 of the defence. Against the objection of Mr Previte, I allowed the defendants leave to re-amend the defence. At that stage, full arguments on the meaning of the words complained of in para 9 had not been addressed to me, and I was not prepared to preclude or shut out the defendants from this defence.

The plea as finally incorporated as para 5 of the defence is as follows:

> Further or in the further alternative, the said words are true in substance and in fact. The said words meant and were understood to mean in their natural and ordinary meaning in the context of the said article that the plaintiff, in the course of meeting the Church delegation on 2 June 1987, had severely criticized the Church and had given the impression that the real target of his government was not the persons it had already detained, but rather four priests it regarded as subversive and whose activities in relation to Catholic organizations and publications the Archbishop had been previously warned not to tolerate.

The meaning which the defendants ascribe to the words complained of and which they now seek to justify comprises two allegations, namely, (i) that the plaintiff, 'in the course of meeting the Church delegation on 2 June 1987, had severely criticized the Church', and (ii) that the plaintiff 'had the impression that the real target of his government was not the persons it had already detained, but rather four priests it regarded as subversive and whose activities in relation to Catholic organizations and publications the Archbishop had been previously warned not to tolerate'. Though they are separate allegations, the second is closely linked with or connected to the first allegation and, on a plain reading of the plea, is a consequence of the first allegation. However, in their arguments before me, both counsel for the plaintiff and the defendants have treated them separately. Thus, separately I shall consider them.

The question is whether the words complained of in para 9 to an ordinary reasonable reader would be understood to bear the meaning ascribed to them in the first allegation. In arguing that this is the meaning an ordinary reasonable reader would derive from the words, Mr Robertson submitted that the word 'attack' ordinarily means 'assail with words', ie criticize. In support, he relied on the meaning of the word 'attack' as given in the *Oxford Dictionary*. I do not think that any exception can be taken to this submission, if it is merely to construe the word 'attack' in isolation in the ordinary sense. But in the context in which the word 'attack' appears in para 9 and in the context of the article and particularly the preceding paragraphs, the word 'attack' does not convey that meaning. As I have shown, the word 'this' in para 9 means the plaintiff's threat to use the powers of the Internal Security Act, if deemed necessary, and in this context, the word 'attack' to a reasonable reader would not mean merely severe criticism. Mr Previte submitted, and I agree with him, that neither the literal words complained of nor the article itself contained any allegations or imputations that the plaintiff 'had severely criticized the Church'. As to the second allegation comprised in the meaning attributed to the words by the defendants, it is directed towards justifying in part the meaning of the second sentence of para 9, that is, 'The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests.' However, this sentence in the literal sense is not the meaning which the defendants seek to justify. They seek to justify the meaning, namely, that the impression that the plaintiff had created was that the real target was not the persons detained, but rather the four priests. That obviously is different from the sense and meaning in the second sentence, which is that the 16 detainees were merely scapegoats for the four priests who were the real targets; clearly the sting there lies in the expression that the 16 detainees were 'merely scapegoats'. To a reasonable reader, the second sentence in para 9 conveys a much stronger meaning than that contended by the defendants. In my judgment, to an ordinary reasonable reader, the words complained of in para 9 would not be understood to bear the meaning ascribed to them in para 5 of the defence. Accordingly, the defendants' plea of justification fails. Further, in my opinion, s 8 of the Defamation Act (Cap 75, 1985 Ed), on which the defendants relied, has no application here.

Before I depart to consider the next issue, I think it is necessary at this point to make a slight digression and make two observations in relation to this plea of justification. First, this plea is obviously based on the material which the defendants now have but which they did not have at the time the article was written and published. What the defendants have done in relation to this plea of justification seems to me most extraordinary. They obtained discovery of the relevant documents; they were

then apprised of certain facts and information; thereupon they decided what possible meaning of the words complained of they could invite the court to find and then pleaded and sought to justify that meaning. That, Mr Previte submitted, was putting the cart before the horse, and he criticized it as very improper. I do not think it is improper, but I do think that setting up the plea of justification in these circumstances is highly suspect. I am reinforced in my view, first, by the gyration of pleadings which had been carried out in relation to this plea and, secondly, by the particulars indiscriminately relied upon by the defendants in support of this plea. They relied on the same matters which they had put forward in support of their plea of fair comment and most of these matters have no relevance to the plea of justification. It seems to me that the defendants have pleaded justification not in respect of the meaning which the words complained of are capable of bearing and do bear but in respect of the meaning which is founded on matters pleaded in support of the defence of fair comment.

My second observation relates to the extent to which the defendants are limited or bound by their plea of justification. Now, the defendants by their pleadings have denied the meaning of para 9 as pleaded by the plaintiff and have denied all other meanings defamatory of the plaintiff. By para 5 of the defence, they have pleaded justification and have specifically ascribed a meaning to the words complained of which they would seek to justify and have relied on numerous particulars purportedly to justify that meaning. That being so, they have by their pleadings made clear their case of justification. However, in the course of the trial, Mr Robertson had on several occasions sought to cross-examine the plaintiff on matters pertaining to justification of other distinct meanings, such as the literal meaning of the words complained of, for example, by suggesting that the plaintiff attacked the Church and questioning him on the grounds for the arrest and detention of the 16 detainees. I had without hesitation disallowed such questions on those occasions. I should explain why.

In *Lucas-Box* v *Associated Newspapers Group Plc*,[4] the defendants, two years after the original defence, applied for leave to amend the defence by setting up a plea of justification. Ackner LJ (as he then was) said that in such a situation, the court should not hesitate in ordering the defendants to plead their case so that the plaintiffs knew clearly what the defendants were purporting to justify, and he went on further and said, at p 153:

> However, we would go even further and say that whatever may have been the practice to date, in future a defendant who is relying upon a plea of justification must make it clear to the plaintiff what is the case which he is seeking to set up. The particulars themselves may make this quite clear, but if they are ambiguous then the situation must be made unequivocal.

This was clarified by Mustill LJ (who was a member of the court that decided *Lucas-Box*[4]) in the subsequent case of *Viscount De L'isle* v *Times Newspapers Ltd*[5] where he said, at p 60:

> First, as to *Lucas-Box*'s case [1986] 1 WLR 147: Two different interpretations have been put on the decision and judgment of this court. The first is that a defendant is now required to plead the meaning which he ascribes to the writing of which the plaintiff complains if that differs from the meaning pleaded by the plaintiff. Second, that the defendant is obliged to make clear what version of the facts it is that he asserts to be true.

The first interpretation he said was wrong. A defendant in pleading justification is not obliged to ascribe a meaning to the words complained of; the defendant is, however, obliged to plead justification in a way which makes it clear the meaning he seeks to justify. He continued:

> The essence of the decision in *Lucas-Box*'s case [1986] 1 WLR 147 — and here it may have broken new ground — is that the *justification must be pleaded* so as to inform the plaintiff and the court precisely what meaning the defendant will seek to justify. This is however an altogether different matter from saying that the defendant is obliged to say, yea or nay, whether that meaning is the one which the writing really bears. (Emphasis added.)

A further statement on the law as regards what should be pleaded in a defence of justification was made by Purchas LJ *in Prager* v *Times Newspapers Ltd*[6] at p 86:

> At the risk of adding confusion to clarity, in my judgment, it is still open to a defendant to plead so as to justify any reasonable meaning of the words published which a jury, properly directed, might find to be the real meaning. In doing this he does not have to identify the precise meaning for which he contends; but he must make clear to the plaintiff what case he proposes to make in precise detail. This may well, and in most cases probably will, disclose one or more meanings of the words which he is prepared to justify; but he is not obliged to plead specifically any meaning for which he contends.

Nicholls LJ in the same case echoed the ruling made by Ackner LJ in *Lucas-Box*,[4] and said, at p 91:

> These conclusions are, however, not quite the end of the matter. When setting up a plea of justification a defendant must plead his case with sufficient particularity to enable the plaintiff to know clearly what is the case, what is the possible defamatory meaning of the words complained of, which the defendant is seeking to justify.

He then referred to the clarification made by Mustill LJ in *Viscount De L'isle* v *Times Newspapers Ltd*,[5] and continued:

> Thus, as I understand it, a somewhat subtle distinction is drawn between (a) the meaning of the words complained of for which the defendant contends (as the practice stands at present, the defendant is not obliged to plead that meaning) and (b) the meaning of the words which, if it is the true meaning of those words, the defendant will seek to justify (that is a meaning which the defendant must now spell out sufficiently to enable the plaintiff to know what case he has to meet).

Though there appears to be slight confusions created by these dicta, the position seems to me to be tolerably clear. A defendant in a defamation action is not obliged to ascribe a meaning to the words complained of. If he pleads justification, then he must show in his pleadings either in a specific averment or in the particulars relied on the meaning he seeks to justify. On the authorities, I was and remain firmly of the view that the defendants are bound by their pleading, and for this reason I disallowed their counsel from cross-examining the plaintiff on matters with a view to establishing justification of a meaning distinct from that they have pleaded. I respectfully repeat and adopt what Ackner LJ said in *Lucas-Box*[4] at p 151:

> It is axiomatic that the function of pleadings is to define the issue between the parties, so that both the plaintiff and the defendant know what is the other side's case and thus everyone, counsel, judge and jury, are able to focus upon the real nature of the dispute. Although to some it may seem a startling observation, we can see no reason why libel litigation should be immune from ordinary pleading rules.

To that I only wish to add that the Rules of the Supreme Court 1970 do not warrant any special treatment of pleadings in a defamation action, and I can see no compelling reason for allowing the defendants to depart from their pleadings in pursuit of any distinct defence of justification which has not been pleaded.

Fair comment — para 9

Contained in this issue are several questions: first, whether the words complained of in this paragraph are a statement of fact or a comment, and if they are a comment, then, secondly, who was the one who made the comment; thirdly, whether the comment is a fair comment, and, fourthly, whether the comment is one made on a matter of public interest. The question whether the words are a statement of fact or a comment is one of fact, the answer to which depends on the nature of the imputation conveyed thereby and the context and circumstances in which the words were published. The same words when published in one context may be a statement of fact, yet when published in a different context may be a comment. For example, if it is said of a member of the Bar that he is unfit to be a member of the Bar, that statement by itself is one of fact. On the other hand, if the same statement was prefaced by a statement that the member of the Bar has been convicted of cheating, then the statement becomes a comment. A clear statement of law on this point is found in the speech of Lord Porter in *Kemsley* v *Foot*[7] at p 356, where he approved a passage from *Odgers on Libel and Slander* (6th Ed); he there said:

> The question, therefore, in all cases is whether there is a sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action, and I find my view well expressed in the remarks contained in *Odgers on Libel and Slander* (6th Ed, 1929), at p 166. 'Sometimes, however,' he says, 'it is difficult to distinguish an allegation of fact from an expression of opinion. It often depends on what is stated in the rest of the article. If the defendant accurately states what some public man has really done, and then asserts that 'such conduct is disgraceful,' this is merely the expression of his opinion, his comment on the plaintiff's conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case, the defendant enables his readers to judge for themselves how far his opinion is well founded; and, therefore, what would otherwise have been an allegation of fact becomes merely a comment. But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what that conduct was, this is an allegation of fact for which there is no defence but privilege or truth. The same considerations apply where a defendant has drawn from certain facts an inference derogatory to the plaintiff. If he states the bare inference without the facts on which it is based, such inference will be treated as an allegation of fact. But if he set out the facts correctly, and then gives his inference, stating it as his inference from those facts, such inference will, as a rule, be deemed a comment. But even in this case the writer must be careful to state the inference as an inference, and not to assert it as a new and independent fact; otherwise, his inference will become something more than a comment, and he may be driven to justify it as an allegation of fact.'

What is of crucial importance is again the context in which the words complained of have been said or published; it is therefore in the context of the article and in particular paras 6 to 11 (which I have set out verbatim) that I now consider the words complained of in para 9. The test is whether an ordinary reasonable reader on reading the whole article would understand the words as a comment or a statement of fact. An ordinary reasonable reader would have gathered that paras 6, 7, 8 and 10 described what happened at a meeting of 2 June 1987 between the plaintiff and the Church delegation led by the Archbishop. Then the reader comes to the crucial paragraph, para 9. On reading that paragraph, he would have noted what a priest was reported to have said. On reading further, the reader would have noted that in para 10, the Archbishop had told the Church meeting of the plaintiff's views on Tan Wah Piow and the 16 detainees, and in para 11, he would have noted what the Archbishop told the priests had happened at the press conferences and what the Archbishop said. The reader would have appreciated that interposed between para 8 and para 10 is a paragraph, ie 9, which did not really describe what happened at the meeting but contained an observation reported to have been made by a member of the Church delegation. It would have been clear to the reader that the member there was expressing an observation that it was hard to believe that 'this'— in my view, 'this' means the threat uttered in the preceding paragraph — was not an attack against the Church and in that respect the real target was the four priests and not the 16 detainees who were merely scapegoats. In the context of these paragraphs, an ordinary reasonable reader would understand that what was quoted to have been said by the member in para 9 was an inference which the member drew from what he had seen and heard at the meeting. I

think that such a reader would understand that the writer of the article interposed para 9 to show the reaction of the member of the Church delegation to the threat uttered by the plaintiff. In my opinion, the words in para 9 stand out clearly as a comment. In the words of Lord Porter, there is a sufficient substratum of fact stated or indicated in the article to found the comment made in para 9. For the present moment, I assume that the facts in the article, on the basis of which the comment was made, were truly and accurately stated; I shall revert to this point in a moment.

Next, I propose to deal with the last question in this issue: whether the comment is one made on a matter of public interest. This question is not really contentious. Mr Previte did not seriously contend that the subject matter of comment was one of public interest, though he did not quite agree that the matter commented on was the relation between the Church and the state, as contended by Mr Robertson. I am firmly of the opinion that clearly the subject matter of the comment is one that concerns the Church and probably is not as wide as what Mr Robertson suggested. I have not the slightest doubt that the matter is one of public interest. I need not go further than the case of *London Artists Ltd* v *Littler*,[8] where the Court of Appeal held that what was happening to a performance at a theatre was a matter of public interest. Lord Denning MR said, at p 391:

> Three points arise on the defence of fair comment. First, was the comment made on a matter of public interest? The judge ruled that it was not, [1968] 1 WLR 607, 623. I cannot agree with him. There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment.

The third question to which I now turn is who was the one who was reported by D'Souza to have expressed the comment. Paragraph 9 was silent as to who the person was. In para (1) of the particulars to para 4 of the defence, the defendants averred as follows:

> The comment was a report by these defendants of an opinion expressed by Reverend Joachim Kang. It was expressed on 3 June 1987 at the residence of Archbishop Gregory Yong. He then said words to the effect of those reported by Edgar D'Souza ...

The defendants were required to furnish, and they did furnish, particulars of the precise words alleged to have been said by Father Kang; but the precise words furnished were different from the words appearing in para 9. Father Kang was called by the defendants. He gave an account of what took place and what he said at the meeting on 3 June 1987 at the Archbishop's residence. When he was asked as to what contributions he made to the discussion, he said:

> Yes. Because as I have said earlier on, the Archbishop went round asking each and everyone of us on that delegation to say our views and I made the points that I found it very hard to reconcile the positions of the Prime Minister and I also made it known my worry about the fates of the four priests. Because on my mind was their safety and also the words of the Prime Minister. He had already reminded us of his powers under the ISA and what could have happened if nothing is being done about these four priests, and also was quite worried about the future of the Church. Would there be a climb down on the statement, for instance, that we had made earlier on? Where do we go from here? So I really felt that we were a target of the whole meeting.

He was then asked what he understood to be the plaintiff's attitude to the Church, and he said:

> I said to the meeting that I had questions, I came away from the Istana meeting with questions and not answers. There are things that just could not reconcile and I said earlier on, I really feared for the fates of these four priests and also the fate of the Church. And I felt that really the targets seemed to be the four priests and the Church. And I said earlier on, the Prime Minister had actually moved from the 16 detainees to the four priests.

On his comment on the 16 detainees, he said:

> Yes, I remarked to the meeting how I felt as I said earlier on, I thought that the whole target seemed to be the four priests and the Church and not that of the 16 persons who had been detained.
>
> Well, I can't recall the words that I used then except conveyed the impression, my impression, to the meeting, that I felt that the target of this action and, you know, whatever the government was doing, was the four priests and the Church and not so much the 16.

He was then referred to para 9 of the article, and he said he recognized 'the particular passage or paragraph' as referring to himself. And to a further question as to why he should recognize that particular paragraph, he said, 'Well, I thought that it expressed the opinion that I had made at the meeting with the Archbishop and the rest of the delegation then.' That piece of evidence is irrelevant and inadmissible. It is not for Father Kang to give evidence whether the words in para 9 were his opinion; it is for him to say whether he in fact said the words, and, if he did say those words, it is for the court to decide whether what he said was an opinion — a comment — or an assertion of fact.

Father Kang was extremely forthcoming in giving his evidence in the examination-in-chief, and I have no doubt that if those words in para 9 were really said by him, he would have said so without any hesitation. He must have known the nature of the evidence he was called upon to give. It is clear to me that on the evidence, Father Kang did not say the words as set out in para 9 which D'Souza reported that he said. What he said at the meeting was different from what was reported by D'Souza in para 9 in

at least two material particulars: he did not refer to the threat by the plaintiff of the use of the powers under the Internal Security Act as 'an attack against the Church'; nor did he refer to the 16 detainees as 'scapegoats'. These words are crucial. In them lies the sting of the libel. In my judgment, the defendants have failed to prove that the words in para 9 were spoken by Father Kang at the meeting of 3 June 1987. Nor have they proved that the words were spoken by anyone. To add to the complication, no one has given any evidence on behalf of the defendants that they have adopted the comment as theirs.

In the circumstances, the immediate question is whether the defence of fair comment is still available to the defendants. Mr Robertson submitted that the words were nonetheless a comment contained in the article; that the defendants — the first defendant as the editor; the second defendant as the author; the third defendants as the publishers, and the fourth defendants as the printers — were entitled to rely on the defence of fair comment, and that on the facts stated or identified in the article, a fair-minded man could honestly make that comment. He relied on the following proposition of law stated in para 12.14 of *Duncan and Neill on Defamation* (2nd Ed):

> It is submitted that as a general rule an expression of opinion will qualify as fair comment if it satisfies the following objective test: could any fair-minded man honestly express that opinion on the proved facts? But even though the comment may satisfy the objective test, the defendant may still be liable if the plaintiff proves that in making the comment the defendant was actuated by express malice.

There are two cases which have a bearing on this point: *Lyon & Anor* v *The Daily Telegraph Ltd*[9] and *Cherneskey* v *Armadale Publishers Ltd.*[10] In the first case, a newspaper published in its correspondence columns a letter with the name and address of the writer thereon. It appeared that there was no person of that name and the address was fictitious. The letter was highly critical of a broadcast entertainment conducted by the plaintiff who then sued the proprietors of the newspaper for defamation. The defendant relied on the defence of fair comment. The trial judge held that the defendants had failed to discharge the onus of proving that the writer of the letter honestly held the views expressed in the letter. On appeal, his decision was reversed. The Court of Appeal held, inter alia, that it was not necessary for the defendants in order to sustain the defence of fair comment to prove that the writer of the letter honestly held the opinion expressed in it and the fact that the writer of the letter had given a fictitious name and address was irrelevant and in no way prevented the defendants from relying on the defence of fair comment which in the circumstances succeeded. In the course of his judgment, Scott J said, at p 753:

> ... that fairness of the comment contained in the newspaper's correspondence columns *must be judged by its tenor*, subject only to the proviso that the statements of fact on which the comment is based are not untrue. (Emphasis added.)

Mackinnon LJ said, at p 754:

> A clearer case of fair comment there can never have been, and I think the point made as to the non-existence of the supposed writer or the genuineness of his address was quite irrelevant. The action was against the defendant company, alleging that they had published a libel on the plaintiff, and the defendants are entitled to say that what they published was not libellous since it was fair comment on a matter of public interest.

In *Cherneskey*,[10] the defendants who were the editor, owner and publisher of a newspaper published a letter in which the writers accused the plaintiff of taking a 'racist' position on a matter. The plaintiff brought an action for libel against the defendants, who pleaded, inter alia, the defence of fair comment. At the trial, the writers of the letter were not called to give evidence, and there was no evidence to prove that the letter was an honest expression of their views. In addition, witnesses on behalf of the defendants testified that the defendants did not hold the opinions expressed in that letter. For these reasons, the trial judge refused to put the defence of fair comment to the jury. The Supreme Court of Canada, by a majority, held that the trial judge was entitled not to put the defence of fair comment to the jury. Ritchie J (with whom the majority concurred) after reviewing the authorities said, at pp 337-338:

> These authorities satisfy me that the newspaper and its editor cannot sustain a defence of fair comment when it has been proved that the words used in the letter are not an honest expression of their opinion and there is no evidence as to the honest belief of the writers.

Dickson J, with whom Estey J concurred, dissented, and held that the test to be applied was the objective test, ie was the comment one that an honest person could make in the circumstances? He said, at p 345:

> In my view, the legal position is this: If a defendant raises the defence of fair comment, he has the burden of establishing that the facts on which it is based are true and that it is objectively fair; if he discharges this burden he will, nevertheless, lose the defence if the plaintiff proves that the comment was published maliciously. It is this second stage of the analysis which raises the subjective issue of the defendant's state of mind or motive.

He accepted the proposition of law stated in *Duncan and Neill on Defamation*, which I have quoted. The majority view in *Cherneskey*[10] has not received support from textbook writers: see paragraph 12.14 of *Duncan and Neill on Defamation* (2nd Ed) and note 51 to para 730 of *Gatley on Libel and Slander* (8th Ed) and, in my view, is inconsistent with *Lyon* v *The Daily Telegraph Ltd.*[9] I am not disposed to follow the majority view and respectfully adopt the objective test stated in para 12.14 of *Duncan and Neill on Defamation*, ie could a fair-minded man honestly express the opinion on the proved facts?

In relation to the objective test, Lord Esher MR in *Merivale* v *Carson*[11] had this to say at pp 280-281:

> What is the meaning of a 'fair comment'? I think the meaning is this: is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men and ordinary judgment must say whether any fair man would have made such a comment on the work ... Mere exaggeration, or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this — would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticized? If it goes beyond that, then you must find for the plaintiff; if you are not satisfied that it does, then it falls within the allowed limit, and there is no libel at all.

To the same effect were the words of Diplock J (as he then was) in his direction to the jury in *Silkin* v *Beaverbrook, Newspapers Ltd*[12] at p 749, where he said:

> ... I will remind you of the test once more. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view — could a fair-minded man have been capable of writing this? That is a totally different question from the question: Do you agree with what he said?

The essential thing is the honest opinion of a fair-minded man, and in this connection every allowance or latitude is to be given for any prejudice and exaggeration entertained by such a fair-minded man. Adopting the words expressed by Diplock J in *Silkin*[12] at p 747, honesty is the cardinal test.

In applying the objective test in this case, it is necessary, first, to examine the material facts proved before me and, secondly, to consider whether on those facts — the proved facts — a fair-minded man could honestly make the comment that was made. There is really no substantial dispute on the material facts. The dispute centres on the interpretation and application of the facts in relation to the defence of fair comment. What have been proved before me, so far as material, are these:

(1) On 21 May 1987, 16 persons were arrested and detained under the Internal Security Act (Cap 143, 1985 Ed), of whom four were full-time workers of the Catholic Church and six were voluntary workers in the Church's organizations.

(2) There were press statements made by Patrick Goh and D'Souza denying the involvement of the Church workers in a clandestine communist network.

(3) After the arrest, there were three meetings between the Archbishop and officials of the Ministry of Home Affairs on 23, 26 and 27 May 1987 respectively. At the meeting of 26 May the Archbishop read the press statement of the government, which was soon to be released to the press. He also met the minister who informed him that the action taken was against the individuals and not the Church, and the Archbishop said that he was convinced, on the basis of what he had read, that the government had reasons for its action. Further, at the meeting of 27 May, he said that on the basis of the information shown to him he could not dispute the facts, and he also told the officials that he would be meeting his priests, after which an official statement would be issued which would include a statement that he was satisfied that the action of the government was not directed against the Church.

(4) There was a meeting on 28 May 1987 between the Archbishop and his priests in consequence of which a joint statement was issued, which was inconsistent with what the Archbishop had told the officials of the Ministry at the meeting of 27 May.

(5) The plaintiff was concerned that the Church and the government were on a collision course and he spoke to his friend, Dr Ee Peng Liang, a lay leader of the Catholic Church, with a view to reaching out to the lay leaders of the Church to explain to them the action of the government; he was desirous of having a meeting with the lay leaders.

(6) Dr Ee suggested that the plaintiff should meet the Archbishop and a delegation from the Church, to which the plaintiff agreed.

(7) Consequently, a meeting was held at the Istana on 2 June 1987 between the plaintiff and a Church delegation consisting of six priests and three lay leaders and led by the Archbishop.

(8) Before the start of the meeting, each member of the delegation was given a folder containing statements by Vincent Cheng and documents implicating the four priests, Patrick Goh, Arotcarena, Joseph Ho and D'Souza, and eight of the ten Church workers who were amongst the 16 detained.

(9) At the meeting the plaintiff said, amongst other things, the following: (a) that the government and the Church were on a collision course; (b) that threat of communism had now emerged in new forms, one of which was 'Euro-communism' which was brought to Singapore by returning students from abroad drawing inspiration from the Philippines; (c) that communists would make use of the Catholic Church and other churches as well because they could get sanctuary; (d) that Tan Wah Piow was a simpleton and out of the jurisdiction; (e) that the plaintiff was not interested in Vincent Cheng and his group because they were novices or novitiates, but he had to deal with them in a way that would make it less likely for others to follow in their wake; (f) that he was, however, more concerned with the involvement of several priests and that the Archbishop had been told about them at previous meetings with officials of the Ministry of Home Affairs; (g) that he took it so

seriously that he mentioned to the Pope problems from the Church when the latter visited Singapore; (h) that the Archbishop had stated his positions previously at the meetings with the officials of the Ministry of Home Affairs; (i) that the Church could modify its position to avoid a collision; (j) that he was prepared to argue his position publicly and to prove he was right; (k) that the Archbishop knew that the government had full rights under the Internal Security Act (Cap 143, 1985 Ed); (m) that he, the plaintiff, wanted the matter to be resolved to avoid a 'crack'; (n) that if nothing was done the Church would be captured by the communists, and between the government and the Church they could prevent 'the infection from spreading'; (o) that D'Souza was a united-front operator, he had 'got' the Archbishop and the plaintiff had enough to expose D'Souza but in so doing he would have embarrassed the Archbishop; (p) that the government knew that the Archbishop had problems and could not cope with them, and (q) that the plaintiff was prepared to go on television with the Archbishop.

(10) At the meeting, the Archbishop read out a prepared statement which said, amongst other things, that the Church was concerned with human rights and innocence of the detainees and that the government had an obligation to prove that the detainees were a threat to security. The plaintiff was impatient, and he questioned the Archbishop on his change of stance from that previously taken at meetings with officials of the Ministry, and the minutes of previous meetings were then produced to show the positions the Archbishop had previously taken and handed to the members of the Church delegation to read.

(11) The plaintiff left the meeting for about an hour, and on his return he said that the government would produce evidence against others as the government had done in Vincent Cheng's case, and the plaintiff reiterated that the detainees were arrested not because they were Church members, and in response he was told by the delegation that six of the detainees were not Church members.

(12) The plaintiff then asked each member individually whether he or she had anything to say, and among those who said something was Father Kang. He referred the plaintiff to the joint statement issued by the Church and sought the plaintiff's views, whereupon the plaintiff replied that the statement was 'equivocal, ambivalent and open to misinterpretation', particularly after three meetings the Archbishop had with the officials of the Ministry.

(13) The plaintiff asked whether the meeting was useful, and one of the members replied that it was, and at the end of the meeting the plaintiff said that Vincent Cheng was the key man and that the government would show evidence against the others, if the Church leaders were interested.

(14) The plaintiff met the Reverend D'Aniello also in the afternoon of 2 June 1987 and had a discussion with him.

(15) After the meeting between the plaintiff and the Church delegation, there was a meeting between the plaintiff, the Reverend D'Aniello and the Archbishop. At this meeting, the Reverend D'Aniello said it was clear to him that the government was not against the Church but against those who involved the Church in politics.

(16) The Reverend D'Aniello and the Archbishop between themselves settled a draft statement which the Archbishop subsequently read out at the press conference.

These facts were principally derived from the minutes of the meetings recorded, and the plaintiff accepted them as substantially correct. The defendants also relied on them for their purpose.

The next question is whether a fair-minded man on these facts could honestly hold the view and make the comment that was made in para 9. At the meeting of 2 June 1987 with the Church delegation, the plaintiff did say that the government had full rights under the Internal Security Act. I think a fair-minded man could honestly believe that that statement was a threat, and that the threat was directed at the four priests. But having regard to the context in which the statement was made and the overwhelming countervailing facts, which have been proved, I do not think that such a fair-minded man could honestly entertain the view or hold the belief that the statement the plaintiff uttered was 'an attack against the Church' and that 'the real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests'. There are really no basic facts — facts that 'go to the pith and substance of the matter' — to found such a comment. In my judgment, a fair-minded man could not honestly hold the opinion and express the comment as set out in para 9. The comment therefore fails to satisfy the objective test as a fair comment.

There is yet another reason why, in my opinion, the defence of fair comment must fail. An essential requirement to the success of the defence is that the facts on which the comment is made must be truly stated so that readers may judge for themselves whether the comment was well founded: see the speech of Lord Porter in *Kemsley* v *Foot*[7] at p 356 which I have quoted. Likewise, Diplock J (as he then was) in his direction to the jury in *Silkin* v *Beaverbrook Newspapers Ltd*[12] at p 746 said:

> The first point, therefore, is that you should not misstate the material facts on which you are commenting. That is common sense and it is the common law. In a great many libel actions one of the matters which the jury have to consider is whether the facts are materially misstated.

'A comment cannot be fair which is built up on facts which are not truly stated'. — per Kennedy J in *Joynt* v *Cycle Trade Publishing Co*[13] at p 294. An examination of the facts proved in this case demonstrates clearly that the facts on which the comment was made were not truly stated in the article. First, right from the start, the first paragraph of the article contained a material error. It referred to D'Souza's account of 'the confrontation between the Archbishop and Prime Minister Lee Kuan Yew'. There was no such confrontation at all; the plaintiff was anxious to reach out to the lay leaders of the Church and he spoke to Dr Ee Peng Liang who suggested that the plaintiff should meet the Archbishop. Following that, a meeting between the plaintiff and a Church delegation led by the Archbishop was arranged and took place, and it was not a confrontation in any sense. Secondly, para 6 described the meeting as a 'stormy meeting'; that also was not correct. It was in all probability a meeting which the plaintiff with his characteristic forcefulness dominated; it might or could be a tense meeting to some members of the Church delegation, but certainly it was not a 'stormy meeting'. It is not correct to say, as was said in para 6, that D'Souza and eight others were excluded from the delegation by the government. Of the 19 selected as members of the Church delegation, three were excluded by Dr Ee and six by the ISD. Thirdly, what was stated in para 7 was not correct. It is not true at all that the Archbishop 'was read' a signed statement by Vincent Cheng which confirmed government's allegations and 'implicated four priests, including D'Souza, in a plot to use the Church to further Marxist interests'. The truth was that each member of the Church delegation was given a folder to read, and that folder contained statements by Vincent Cheng and documents implicating the four priests and eight of the ten Church workers who were amongst the 16 detained. True it is that the four priests were implicated in the statements, but they were not implicated 'in a plot to use the Church to further Marxist interests'. Fourthly, it is also not true that when the Archbishop complained that he had not been warned of such 'subversive activities', the plaintiff produced transcripts of three meetings between the Archbishop and officials of the Ministry of Home Affairs. The true position was this. The Archbishop at the previous meetings with officials of the Ministry of Home Affairs had said that he was convinced on the basis of what he had read that the government had reasons for its action and that he could not dispute the facts. He had also said that after his meeting with his priests on 28 May 1987, he would issue a statement saying, amongst other things, that he was satisfied that the action of the government was not directed against the Church. At the meeting of 2 June 1987, he appeared to have changed his stance; he requested the government to prove that the detainees were guilty and a threat to security. The notes of the previous meetings were therefore produced to show the positions which the Archbishop had taken previously. Fifthly, the facts in para 8 were stated out of their proper context. The Archbishop at the meeting read a statement from a prepared text which appeared to be lengthy and in which, amongst other things, he appeared to question the propriety of the detention of the 16 detainees and ask for proof of their guilt. It was in relation to the reading of this statement that the plaintiff was impatient and asked the Archbishop as to how long more he would take to finish that statement. The facts as stated in the last sentence of para 8 were not correct. The plaintiff did not say that he was ready to use the powers of the Internal Security Act if deemed necessary, 'if the [Archbishop] could not put his own house in order'. What the plaintiff did say was that the government had full rights to use the powers of the Internal Security Act, but he did not tack on to this statement the condition, ie if the Archbishop could not put his own house in order. Lastly, material facts were not stated in the article, such as, the plaintiff's statements that the 16 detainees were arrested not because they were members of the Church and that the government was prepared to produce evidence of the other detainees if members of the delegation were interested. It is apparent that the facts stated in the article were culled from the documents faxed to the second defendant by D'Souza on 2 December 1987, and that in writing the article, the second defendant merely assumed that they were true. Unfortunately they were not. Lord Ackner in *Joshua Benjamin Jeyaretnam* v *Goh Chok Tong*[14] at p 3 said:

> It is of course well established that a writer may not suggest or invent facts and then comment upon them, on the assumption that they are true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. The commentator must get his basic facts right.

and quoted the following passage of the judgment of Lord Denning MR in *London Artists Ltd* v *Littler*[8] at p 391:

> The basic facts are those which go to the pith and substance of the matter: see *Cunningham-Howie* v *Dimbleby* [1951] 1 KB 360, 364. They are the facts on which the comments are based or from which the inferences are drawn — as distinct from the comments or inferences themselves. The commentator need not set out in his original article all the basic facts: see *Kemsley* v *Foot* [1952] AC 345; but he must get them right and be ready to prove them to be true.

In this case, the defendants plainly had not got the basic facts right in the article. In the result, the foundation of the plea of fair comment fails.

Meaning of para 11

I now turn to para 11. The plaintiff in the statement of claim pleaded that the words complained of in para 11 in the context of the article meant and were understood to mean in their natural and ordinary meaning that the plaintiff:

(i) had tricked Archbishop Gregory Yong into attending a press conference by failing to inform the Archbishop that a press conference had been arranged;

(ii) had trapped or forced Archbishop Yong into accepting the validity of statements concerning the activities of one Vincent Cheng;
(iii) had used his influence as Prime Minister to prevent or dissuade Singapore Broadcasting Corporation and the *Straits Times* newspaper from broadcasting or publishing Archbishop Yong's alleged qualification of his acceptance of statements concerning Vincent Cheng.

Here again, the defendants deny that the words bore such meaning or any meaning defamatory of the plaintiff.

The question of identity in this paragraph (except the last sentence thereof) is not problematical and also is not really contentious. The plaintiff was specifically mentioned, and in the context of the article, the words complained of in para 11 (except the last sentence) would be understood by any ordinary reasonable reader to refer to the plaintiff. Mr Robertson has conceded this, and, in my view, rightly.

I turn to consider first the natural and ordinary meaning of the words in this paragraph, leaving aside the last sentence and thereafter the natural and ordinary meaning of that sentence. An ordinary reasonable reader when he comes to para 11 would have read paras 6 to 10 of the article which referred to the meeting of 2 June 1987 and described what took place thereat. In reading para 11, he would note the facts alleged therein: that the Archbishop was leaving the meeting accompanied by the plaintiff; that the Archbishop was shown to a room where a press conference had been called without his prior knowledge; that he reported that he felt 'cornered'; that he confirmed before the television cameras that he had had no way to disprove the statement signed by Cheng, and that, however, he qualified his confirmation by saying that he would take things at their face value for the time being. In this context, the meaning which the words would convey to an ordinary reasonable reader is that the press conference was sprung on the Archbishop without any previous notice or warning; that the Archbishop was tricked into attending the press conference and was pressurized to confirm before television cameras the statement which he made, and that the plaintiff had resorted to the tactics of trickery and improper pressure to cause the Archbishop to make the statement. The word 'cornered' in the context of this paragraph has a sinister implication: it connotes that the Archbishop had been tricked and improperly pressurized. In my judgment, to an ordinary reasonable reader this is the natural and ordinary meaning of the words complained of.

As regards the last sentence in para 11, it was contended on behalf of the plaintiff that this sentence being published in the context in which it appeared contained grave and sinister implication directed at him, and the inferential meaning was that the plaintiff had used his influence as the Prime Minister to prevent or dissuade SBC and *The Straits Times* newspaper from broadcasting or publishing the Archbishop's qualification to his statement. Mr Previte argued that this was the sinister meaning insinuated, and it was further enhanced by the introduction of the word 'state-run' before the word 'television'. I agree that there was a sinister insinuation in this sentence, but I do not agree that an ordinary reasonable reader would understand the sentence to convey the inferential meaning as suggested by or on behalf of the plaintiff. I think that an ordinary reasonable reader would understand that the sinister insinuation was against 'the state-run television' and *The Straits Times* newspaper. It imputes to both of them a partiality in their reporting or some improper motives in suppressing this material qualification which was expressly made by the Archbishop; alternatively, at its lowest, it imputes carelessness on their part. In my judgment, the last sentence, even though it was set out as a part of para 11, would not convey to an ordinary reasonable reader the meaning contended on behalf of the plaintiff or any meaning defamatory of him.

In my judgment, the words in para 11 (excluding the last sentence) bearing the meaning which I have found, are defamatory of the plaintiff; they impute dishonorable and discreditable conduct on his part both as a man and as the Prime Minister, and tend to lower him in the estimation of right-thinking people in Singapore.

Justification of para 11

The defendants pleaded justification of the words complained of in para 11 as follows:

> (6) Further or in the further alternative, if, which is not admitted, the words complained of in para 3(b) of the statement of claim [para 11] amount to statements of fact and if they have the following meaning:
>
> (a) that the plaintiff had pressurized the Archbishop to face a televised press conference which he had not anticipated and was reluctant to attend; and/or
> (b) that the Archbishop had been pressurized by the plaintiff to accept the truth of Cheng's statement;
>
> they are true in substance and in fact; the defendants do not allege that the plaintiff used his influence as Prime Minister to prevent or dissuade the Singapore Broadcasting Corporation or *The Straits Times* newspaper from broadcasting or publishing anything the Archbishop Yong said. The defendants will rely, if necessary, on s 8 of the Defamation Act (Cap 75, 1985 Ed).

The defendants have not succeeded in proving justification of the allegations contained in their plea. They have not called the Archbishop to substantiate their allegations; they relied wholly on the minutes of the meetings that took place on 2 June 1987, and the evidence of the plaintiff and, in particular, the evidence given by him in cross-examination. At most, the evidence shows that ini-

tially the Archbishop was reluctant to attend the press conference, but was subsequently persuaded to do so; that the plaintiff did persuade the Archbishop and so also did the Reverend D'Aniello. The important fact was that a draft statement was settled between the Archbishop and the Reverend D'Aniello and there is no evidence that it was a draft dictated by the plaintiff. At the press conference, the Archbishop made the statement in terms of the draft. There is also no evidence that the plaintiff had resorted to any trickery or improper pressure to cause the Archbishop to attend the conference and make the statement which he made. The sting of the words complained of in para 11 is that the plaintiff resorted to trickery and improper pressure, and the facts before me did not come near to justifying the real sting of these words. Section 8 of the Defamation Act (Cap 75, 1985 Ed), on which the defendants relied, does not assist the defendants at all; it has no application. In my judgment, this defence of justification fails.

Fair comment — para 11

The defendants raised the plea of fair comment in respect of para 11 in the following way: that that part of para 11 which said that the Archbishop 'reported that he felt 'cornered'' was not a statement of fact but a comment. In my judgment, this defence has no merit at all. In the first place, in the context of the article, an ordinary reasonable reader would have no hesitation in coming to the conclusion that that part of the paragraph was an imputation of fact and was not a comment. There was no sufficient substratum of facts on which to base the comment. Secondly, even if that part of the paragraph was a comment, the facts on which the comment was founded had not been truly and accurately stated. Apart from the last sentence, the facts in the whole of para 11 had been materially misstated. I reject this defence without any hesitation.

Qualified privilege — right of reply to attack

I now turn to the defence that the words complained of in paras 9 and 11 were published on an occasion of qualified privilege and the words therefore were protected. The defendants have set up this defence on two bases: (i) the exercise by D'Souza of a right of reply to the attack on him made by the minister in Parliament in November 1987, and (ii) in the alternative, there was a duty on the part of the *Review* to provide information which the public in Singapore were entitled to receive.

I deal first with the defence of qualified privilege on the basis of D'Souza's exercise of right of reply. By para 8 of the defence, the defendants pleaded as follows:

> Further or in the further alternative, the words complained of in para 3(a) and (b) [paras 9 and 11 of the article] of the statement of claim were published on an occasion of qualified privilege.

The particulars relied upon in support of this plea are these. The minister in Parliament on 30 November 1987 made a defamatory attack on D'Souza to the effect, amongst other things, that D'Souza:

> (i) may have been involved in a Marxist conspiracy, either as a cat's paw or as an agent of foreign subversives;
> (ii) was determined to embroil the Church in political issues and put it on a collision course with the government;
> (iii) had conducted himself without the authority of his religious superiors, and had made wild accusations against the government and derogatory statements against his Archbishop;
> (iv) was a dissolute hypocrite whose moral duplicity led him to make false statements about the government and to claim falsely that he was a priest in danger of persecution.

The avowed purpose of the attack was so that people everywhere, including Australia and New Zealand, could judge D'Souza's worth as a witness and a protagonist. Under the doctrine of collective cabinet responsibility, the plaintiff as the Prime Minister shared the responsibility for the attack and that what the minister said was widely published — it was published in the *Hansard* and the Singapore newspapers — and D'Souza chose to publish his reply through the medium of the *Review*. There are two paragraphs of the particulars I should set out verbatim, as they form the basis for this defence. They are paras 8(f) and (g), which are as follows:

> (f) The said words were published as part of an article subtitled 'Catholic priest answers Jayakumar's allegations'. The article identifies and summarizes the said attack, and sets out D'Souza's response to it. The said words were part of that response, and were relevant to the issue of D'Souza's credibility which the said attack had deliberately called into question.
>
> (g) In the premises, the defendants' publication of the said words was reasonable and necessary to facilitate the exercise of D'Souza's right to reply to the said attack through the medium of a magazine which might be read by persons to whom the minister, as indicated in subpara (b) above, directed his attack.

There is no dispute that in law a person who has been publicly defamed is entitled to reply to the defamation publicly, and such reply may be made through the press and is privileged. This privilege extends also to protect a newspaper which publishes the reply of the person defamed. The leading case on this subject is *Adam* v *Ward*.[15] In that case, the plaintiff, Major Adam, who was also a member of Parliament, made a speech in Parliament which was defamatory of one Major General Scobell. In view of the speech, Major General Scobell referred the matter to the Army Council which, after an investigation, issued through the press a letter signed by the secretary to the Army Council. That letter was complained by Major Adam to be defamatory of him and subsequently formed the subject of an action brought by him against the secretary. At the trial, several questions were put to a jury, and

upon replies from the jury the learned trial judge held that the publication was not published on a privileged occasion, and he entered judgment for the plaintiff. The defendant appealed to the Court of Appeal which held that the occasion was privileged and there was no evidence of malice and directed that judgment be entered for the defendant. Against that decision, the plaintiff appealed to the House of Lords, and the questions for determination were whether the occasion of the publication was privileged and if so, whether there was any malice on the part of the defendant. It was held that the occasion was privileged and that there was no evidence of malice on the part of either the Army Council or the defendant. Four of the five Law Lords who heard the appeal, in the course of their speeches, made clear pronouncements to the effect that the privilege did not extend to cover a communication on any extraneous matters or something beyond what was germane and reasonably appropriate to the occasion. It is sufficient to quote the following extracts from the speeches of Lord Finlay LC and Earl Loreburn. Lord Finlay LC said, at p 318:

> The privilege extends only to a communication upon the subject with respect to which privilege exists, and it does not extend to a communication upon any other extraneous matter which the defendant may have made at the same time. The introduction of such extraneous matter may afford evidence of malice which will take away protection on the subject to which privilege attaches, and the communication on the extraneous matter is not made upon a privileged occasion at all, inasmuch as the existence of privilege on one matter gives no protection to irrelevant libels introduced into the same communication.

Earl Loreburn said at pp 320 to 321:

> But the fact that an occasion is privileged does not necessarily protect all that is said or written on that occasion. Anything that is not relevant and pertinent to the discharge of the duty or the exercise of the right or the safeguarding of the interest which creates the privilege will not be protected. To say that foreign matter will not be protected is another way of saying the same thing. The facts of different cases vary infinitely, and I do not think the principle can be put more definitely than by saying that the judge has to consider the nature of the duty or right or interest and to rule whether or not the defendant has published something beyond what was germane and reasonably appropriate to the occasion, or has given to it a publicity incommensurate to the occasion. For a man ought not to be protected if he publishes what is in fact untrue of someone else when there is no occasion for his doing so, or when there is no occasion for his publishing it to the persons to whom he in fact publishes it.

The protection of a privileged occasion therefore does not extend to statements which have no relevance to a reply to the attack or which are not in any way appropriate to the occasion. The point in issue here is whether the words complained of in paras 9 and 11 are relevant or appropriate to D'Souza's reply to the attack on him made by the minister in Parliament on 30 November 1987. This, in turn, turns on what was said of D'Souza by the minister.

The statement of the minister was extremely lengthy, and I need only to set out the substance of what he said of D'Souza, namely:

(a) that no warrant had been issued for the arrest of D'Souza.

(b) that D'Souza was closely associated with Vincent Cheng, a central figure in the Marxist conspiracy, and several of the detainees, and that he was one of the members of the ad hoc group which was formed to expand the influence of 'social-oriented' Catholic groups;

(c) that he was one of those who undertook to edit papers on the rights and responsibility of Christians to participate in politics drafted by members of the ad hoc group for publications, and was involved in the publication of *Catholic News* as the editor, embroiling the Church in political issues;

(d) that though a priest, D'Souza had involved himself in partisan politics;

(e) that when the detainees were arrested he mounted a campaign to stir up local and international opposition against the arrests, such as making press statements, without any authority of the Archbishop;

(f) that he resigned from the *Catholic News* on 4 June 1987 and was subsequently suspended by the Archbishop from preaching and from having anything to do with the *Catholic News*;

(g) that he left for Australia on 5 June 1987, and while in Australia and in New Zealand, he made wild accusations against the government and derogatory statements running down the Archbishop;

(h) that he carried on an illicit relationship with a lady lawyer;

(i) that since D'Souza embarked on a campaign against the government, it was necessary to expose his moral duplicity so that people everywhere, including Australia and New Zealand, could judge his worth as a witness and a protagonist;

(j) that he would not be arrested because on the basis of the information the government had, he was not directly involved in the Marxist conspiracy;

(k) that he was purveying the line that there was a warrant for his arrest — a move designed to present himself as a persecuted priest;

(l) that the government, by reason of the campaign mounted by D'Souza, found it necessary to make these facts public to show that in reality his conduct was at least questionable, and

(m) that the Minister would not rule out that the ISD would want to question D'Souza to establish whether he was a cat's paw or an agent of any radical or subversive group abroad.

I now turn to D'Souza's reply to the attack. He sent to the *Review* a press statement on 2 December 1987 which, according to him, superseded his earlier statement sent on

29 November 1987. In addition to sending the press statement (of 2 December 1987), D'Souza sent to the *Review* two additional documents: the first was a document headed: 'A background to the detention without trial of community and church workers in Singapore by Edgar Kenneth D'Souza', and the second was a copy of p 11 of a letter sent by the Archbishop to the Vatican, being a report of the extraordinary Presbyterium meeting held on 5 June 1987.

Looking at all these documents, it is clear to me that the press statement was intended by D'Souza to be a reply to the minister's statement. The press statement was headed: 'Press statement by Reverend Father Edgar Kenneth D'Souza. (This statement supersedes my statement of Sunday, 29 November 1987.) For immediate release', and the first paragraph said:

> I have decided to issue this statement in the light of various recent reports in Singapore newspapers including a report on what was said about me in Singapore's Parliament on 30 November, concerning my work in the field of justice in Singapore, Australia and New Zealand (since my departure from Singapore) and my personal life. I believe these are two distinct and separate issues.

It went on to describe his devotion to Church works and teachings; that he had consistently upheld and worked to promote the social teachings of the Catholic Church; his meetings with the media, the Church and human rights groups in Australia and New Zealand; the information he gave and the observation he made and the reactions from those groups. He maintained in that statement that the four full-time Church workers were fully committed to the Church work; that the six voluntary Church workers had contributed time and energy to specific work in the Catholic organizations; that Vincent Cheng and his group were not involved in a Marxist conspiracy, and that he was a Marxist. He explained his reason for leaving for Australia and for the change of his present status there to that of a permanent resident. He referred to the minister's statement which had cast 'aspersion' on his personal life and berated the government for encroaching on his personal life. Lastly, he explained that that was 'a very personal and private matter and concerned only his religious superior and himself'.

The background document and p 11 of the Archbishop's letter were sent to the *Review* for a different purpose: to make available to them material for an article to be written. In his covering note faxed to Margaret Scott or Michael Malik (the second defendant) of the *Review*, D'Souza said:

> In the light of *FEER*'s reporting on the Singapore issue, I have decided to make available to you two annexures. In the first, for the first time I reveal publicly what happened during the meeting between Lee Kuan Yew and Archbishop Yong and his delegation. The second is a photocopy of one page of Yong's report to the Vatican which he sent me. I have not made these documents available in Singapore or to *Asiaweek*.

The background document consisted of six pages, and contained a brief account of the arrest of the 16 detainees and the joint astoral letter — the joint statement — issued by the Archbishop. It described at great length the meeting of 3 June 1987 between the Archbishop and members of the delegation and three of the four priests at the Archbishop's residence and gave a hearsay account of the meeting of 2 June 1987 between the plaintiff and the Church delegation and the press conference as reported by the Archbishop at the meeting of 3 June. Finally, it gave an account of the aftermath of the meeting of 3 June. Page 11 of the letter by the Archbishop to the Vatican was a report of (i) the resignations of the four priests, Patrick Goh, Joseph Ho, Arotcarena and D'Souza, from their respective positions to which the Archbishop had appointed them; (ii) the reasons for the statement by the Archbishop and that he had suspended them from preaching and from having any contact with the Church's organizations, and (iii) the reasons for such suspension.

From these three documents, the second defendant composed the article, and it is necessary to consider how relevant and appropriate this article was to the attack on D'Souza by the minister. Mr Robertson submitted that the whole of the article was referable to the attack on D'Souza and founded his submission on this basis. The allegations made by the minister revolved round the question of whether D'Souza was in danger of arrest, and this was borne out by the specific questions asked of the minister in Parliament: three out of six questions touched on or related to that matter. The statement of the minister was in answer to these questions. There was, he said, a common thread that ran through the entire article, and it was this: D'Souza was in danger of arrest. The entire flow of the article was to explain why D'Souza was in danger of arrest, why he fled and what happened in relation to the detentions. The whole of the article therefore was a reply to the Minister's statement. This argument I am unable to accept; though ingenious, it is entirely devoid of any basis and must fail. First, though three of the questions asked of the minister related to whether D'Souza was to be arrested, the minister's statement in reply went beyond those questions; it was a lengthy statement and sought to expose D'Souza association with Vincent Cheng and his group and D'Souza's moral duplicity, and to impeach or attack his credibility, in view of what D'Souza did and said in Australia and New Zealand. Secondly, a greater part of the article was certainly not referable and not a reply to the attack on D'Souza.

It is abundantly clear to me that principally, the article purported to be a report of events relating to the detention of the 16 detainees in May 1987. First, the headings themselves are indicative of this: a bold and promi-

nent heading 'New light on detentions' and a relatively modest sub-heading 'Catholic priest answers Jayakumar's allegations'. This is only a minor point. Secondly, and more importantly, the contents of the article bear this out beyond any doubt. Paragraphs 2 and 3 of the article referred briefly to the statement of the minister in Parliament, and D'Souza's reply was set out only in paras 4 and 5. Starting with para 6, the article digressed to what the *Review* termed 'new light' on the government's detention of the detainees, though this part of the article, ie from para 6 onwards to the end (which I shall refer to as the 'main part'), shed hardly any light on the detention. It described the meeting of 2 June 1987 between the plaintiff and the Church delegation, the press conference after that meeting, the meeting of 3 June 1987 between the Archbishop and members of the delegation and the aftermath. The main part of the article therefore contained distinct topics, wholly unconnected with and irrelevant to the reply of D'Souza to the attack on him, and (except the last paragraph) came from the background document and p 11 of the Archbishop's letter to the Vatican. In particular, paras 9 and 11 came from two paragraphs respectively of the background document. In respect of para 9, the words attributed to Father Kang cannot, in my opinion, conceivably serve to rebut what was said by the minister of D'Souza or enable readers of the article to make any evaluation of the credibility of D'Souza. Similarly, in para 11, the statement that the Archbishop said that he felt 'cornered' and confirmed a statement before the television cameras has no relevance to or bearing on D'Souza's reply to the attack. None of the matters alleged in these two paragraphs were put in issue by anything said by the minister in Parliament. Paragraphs 9 and 11 are certainly not within the limits of what could be regarded as reasonable and necessary to enable D'Souza to defend himself against or to rebut the attack or any part thereof made on him by the minister. These paragraphs, in my opinion, contain extraneous and 'foreign' matters and are not covered by qualified privileges, and the words complained of are not protected. Accordingly, this defence cannot succeed.

Qualified privilege — duty to provide information

On this defence, it is helpful to start with the following proposition of law as stated in para 560 of *Gatley on Libel and Slander* (8th Ed):

> It is now the general rule that the law does not recognize an interest in the public strong enough to give rise to a duty to communicate in the press. Such a duty has been held to exist on special facts, but there is no general 'media privilege at common law'.

Privilege for publication in the press of information of general public interest is confined to cases where the publisher has a legal, social or moral duty to communicate it to the general public: *London Artists Limited* v *Littler*.[8] In that case, the defendant, a theatrical producer, wrote in a national press a letter which appeared to suggest that the plaintiffs, who were persons and organizations in an entertainment industry, had taken part in a plot to force the end of the run of a play which he (the defendant) was producing by arranging for four players in the cast simultaneously to give identical notices to leave. That letter was written after he had been informed of a desire by the management to transfer another play to the theatre and after he had received the players' notices in accordance with their contracts to appear. In three actions brought against him by three plaintiffs respectively for libel, he pleaded, inter alia, the defence of publication on an occasion of qualified privilege. On this defence, Cantley J held that the defendant was not under a duty to communicate the information to the public generally and the general public had no legitimate interest in receiving it. He said, at p 619:

> The cases to which I have referred show a uniformity of approach. In my view the privilege or publication in the press of information of general public interest is confined to cases where the defendant has a legal, social or moral duty to communicate it to the general public, or does so in reasonable self-defence to a public charge, or in the special circumstances exemplified by *Adam* v *Ward* [1917] AC 309.
>
> A duty will thus arise where it is in the interests of the public that the publication should be made and will not arise simply because the information appears to be of legitimate public interest.
>
> In the present case I am not satisfied that the defendant was under any duty to communicate this information to the public generally. It was merely his own ex parte impression and deduction which, as such things often do, turned out to be sadly wrong. I am not satisfied that the public generally had any legitimate interest in receiving this information, although they no doubt found it very interesting. Nor am I satisfied that the defendant's own legitimate interests required this hastily and unfortunate publication to be made.

That case went on appeal to the Court of Appeal; but this part of his decision was not disturbed on appeal.

The decision of Cantley J on qualified privilege was considered by the Court of Appeal in *Blackshaw* v *Lord & Anor*[16] and, so far as I can see, was approved. The facts in that case were rather complicated; suffice it here to say that one of the issues raised in the appeal was the question whether a common law qualified privilege attached to the article which was found to be libellous. All the three Lord Justices were unanimously of the view that to found such a defence, the publication must be made in pursuance of a legal, social or moral duty to persons having a corresponding duty or interest to receive it but does not cover information on matters of public interest where there is no such duty to publish. It is sufficient to quote the following passages from the judgments of Stephenson and Dunn LJJ. Stephenson LJ said, at pp 300 to 301:

> The question here is, assuming Mr Lord recorded Mr Smith's conversation with him fairly and accurately, did Mr Lord

(and his newspaper) publish his report of that conversation in pursuance of a duty, legal, social or moral, to persons who had a corresponding duty or interest to receive it? That, in my respectful opinion, correct summary of the relevant authorities is taken from the Report of the Committee on Defamation, para 184(a), repeated in Duncan and Neill, *Defamation*, para 14.01.

I cannot extract from any of those authorities any relaxation of the requirements incorporated in that question. No privilege attaches yet to a statement on a matter of public interest believed by the publisher to be true in relation to which he has exercised reasonable care. ... Public interest and public benefit are necessary (cf s 7(3) of the Defamation Act 1952), but not enough without more. There must be a duty to publish to the public at large and an interest in the public at large to receive the publication; and a section of the public is not enough.

The subject matter must be of public interest; its publication must be in the public interest. That nature of the matter published and its source and the position or status of the publisher distributing the information must be such as to create the duty to publish the information to the intended recipients, in this case the readers of the *Daily Telegraph*.

Dunn LJ said, at p 310:

This review of the authorities shows that, save where the publication is of a report which falls into one of the recognized privileged categories, the court must look at the circumstances of the case before it in order to ascertain whether the occasion of the publication was privileged. It is not enough that the publication should be of general interest to the public. The public must have a legitimate interest in receiving the information contained in it, and there must be a correlative duty in the publisher to publish, which depends also on the status of the information which he receives, at any rate where the information is being made public for the first time.

These authorities establish beyond peradventure that there is no general duty on the press to communicate information. Nor in that respect do they enjoy any special right or privilege in law. The Privy Council in *Arnold* v *The King-Emperor*[17] at p 169 stated clearly, though obiter, the position as follows:

Their Lordships regret to find that there appeared on the one side in this case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position.

Reverting to the facts in this case, there is certainly no duty to communicate information of the kind contained in the article, such as the information of the meeting and the press conference on 2 June 1987. More particularly in this case, the *Review* was reporting a hearsay account given at a private meeting between the Archbishop and members of the delegation. Though Father Kang said in evidence (in cross-examination) that the Archbishop did not enjoin the meeting to be a private one and the discussions thereat to be confidential, as a matter of common sense, it must have been plain and obvious to anyone attending such a meeting that it was to be a private meeting and that the discussions thereat were to be treated as confidential. It is too far-fetched for the defendants to say that they were under a duty to publish to the public communication made at such private meeting. Moreover, the matters which the *Review* reported in the article — the two meetings and the press conference — were more than six months old. Such information therefore cannot conceivably be said to be one that the public has a legitimate interest to receive and the *Review* has a duty — whether legal, moral or social— to report.

Mr Robertson relied on a Canadian case, *Camporese* v *Parton*.[18] In that case, a columnist of a newspaper wrote an article in the newspaper defaming the plaintiff in his trade; the article reported that the plaintiff was trying to sell a large quantity of canning lids imported from Taiwan which were defective and could cause food poisoning. The court held that the article was defamatory of the plaintiff but was published on a privileged occasion. In the special circumstances of the case, the court held that the columnist was under a duty to report what she wrote in the article to the readers of the newspapers. One of the circumstances was that previously at the behest of the plaintiff, the columnist had written an article commending the canning lids of the plaintiff to her readers. Hence, upon becoming aware of what she honestly believed to be defects in the same product, it was her duty to communicate such information to her readers. Clearly, that case was based on special circumstances and is of no assistance to the defendants.

Lastly, Mr Robertson founded the defendants' duty to report and communicate information on the basis of art 14(1)(a) of the Constitution of Singapore. Article 14(1)(a) provides:

Subject to clauses (2) and (3) —

(a) every citizen of Singapore has the right to freedom of speech and expression.

He conceded that the right to freedom of speech and expression is conferred on Singapore citizens, and the first three defendants have no such right. He submitted, however, that the right to freedom of speech and expression includes a right to receive information or to have free access to information, and, accordingly, the citizens of Singapore have a right to receive the information contained in the article. On the basis of this right, there arises a duty on the part of the defendants to communicate or report the information. In my judgment, such a right to information conferred on citizens does not give rise to any

duty on the part of the defendants to communicate the information. I accept that if an article is published, all citizens will have a right (subject to art 14(2) of the Constitution), to have access to the information contained therein. However, it does not follow that because of this right, the publisher of such an article has a duty to communicate and report the information. At common law a publisher has no such duty, and I am not persuaded that art 14(1)(a) of the Constitution gives rise to such a duty. I therefore reject this argument of Mr Robertson. In the result, this defence of qualified privilege also fails.

Express malice

Since the defendants have not succeeded in their defences of fair comment and qualified privilege or either of them, the issue of express malice is of no relevance to those defences. However, it is still relevant in the assessment of damages. At any rate, full arguments have been addressed to me on this issue, and I think I should deal with it.

Malice in defamation means 'any ill-will, spite or some wrong or improper motive'. *Duncan and Neill on Defamation* (2nd Ed) in para 17.04 said:

> The term 'express malice' has been the source of some confusion because the word 'malice' as a word in general use connotes spite or ill-will whereas the express malice which can defeat a defence of fair comment or qualified privilege can include within its ambit not only spitefulness but also a state of mind which is not 'malicious' in the ordinary sense of the word.

The question here is whether the defendants were actuated by express malice at the time when the article was published and the burden of proving this is on the plaintiff. In this connection, two points should be borne in mind. First, in this case, as there are four defendants, the plaintiff must prove express malice against each of them, subject to this qualification, that is, if express malice is proved against the first or second defendant, the third defendants will be liable vicariously on the basis of respondeat superior. Lord Denning MR said in *Egger* v *Viscount Chelmsford & Ors*[19] at p 265:

> It is a mistake to suppose that, on a joint publication, the malice of one defendant infects his co-defendant. Each defendant is answerable severally, as well as jointly, for the joint publication: and each is entitled to his several defence, whether he be sued jointly or separately from the others. If the plaintiff seeks to rely on malice to aggravate damages, or to rebut a defence of qualified privilege, or to cause a comment, otherwise fair, to become unfair, then he must prove malice against each person whom he charges with it. A defendant is only affected by express malice if he himself was actuated by it: or if his servant or agent concerned in the publication was actuated by malice in the course of his employment.

Secondly, though it was the state of mind of each of the defendants at that time, I am entitled to look at events both before and after the publication to see if any or more of them cast any light on the issue: see paras 1344 and 1348 of *Gatley on Libel and Slander* (8th Ed); *Pearson* v *Lemaitre*[20] and *Macleod* v *Wakley*.[21] In the last mentioned case, Lord Tenterden CJ said:

> I am by no means satisfied that what is published at any time before the trial, may not be evidence to shew the motive of the party; however late anything takes place, it may be evidence of a previous intention as to a previous fact.

I consider first the question of express malice as regards the first and second defendants together. The first defendant was the editor and the second defendant the author of the article. As the editor, the first defendant would have considerable say on the content of the article, and in him would rest the final decision whether or not the article or any part thereof should be published. Both of them were in the employment of the third defendants.

The plaintiff relied on several matters as giving rise to an inference of express malice on the part of the first and second defendants; it is necessary to examine only the material ones in some detail to see if all or any of them warrant such an inference.

(i) Meeting on 10 September 1985

The plaintiff had a meeting with the first defendant on 10 September 1985, at which the plaintiff warned the first defendant that the *Review* was 'engaging in local polemics, twisting tales' and 'touching on sensitive racial issues'. The plaintiff revealed that legislation was on foot 'to designate' foreign publications indulging in local politics 'as a gazetted publication'. He asked the first defendant 'to stick to reporting events in Singapore as an outsider' and to stay out of local debates and not to get involved in domestic politics. If the first defendant would adhere to these conditions 'the government would live and let live'. The first defendant said he would try to stick to the bargain and 'would live and let live'. But he disagreed with the plaintiff that certain articles the latter complained of, were inflammatory. According to the minutes, the meeting ended with the first defendant saying 'that he was glad there was some meeting of the minds'. It does not appear to me that that meeting was an acrimonious one, where there were heated arguments in exchange, though the plaintiff said that at that meeting he gave to the first defendant 'an ultimatum' on the *Review*'s publications of local debates on political issues. There is no evidence to suggest that the first defendant left the meeting totally disgruntled with or embittered by what the plaintiff had told him. I do not, of course, say that the first defendant was happy or satisfied with what the plaintiff had said. However, I do not think that very much can be inferred from this meeting other than that at the time of publication of the article, the first defendant must have had in mind the warning given to him in September 1985 but decided to go ahead with the publication nonetheless. This, in my judgment, cannot constitute any evidence or

support any inference of malice on the part of the first defendant. I therefore disregard this event.

(ii) Reckless conduct of the first and second defendants

The first and second defendants as experienced journalists— according to Mr Robertson, the first defendant is one of the most experienced journalists in the world — must have known of the following matters or events that took place from May 1987 to December 1987: the arrest and detention of the 16 detainees of whom four were full-time workers of the Church and six were voluntary workers in the Church's organizations; the statement of D'Souza published in *The Star* in Malaysia on 23 May 1987; D'Souza's press statement on 27 May 1987 and published in *The Star*; the resignation of D'Souza from the positions of editor of *Catholic News* and liaison officer; his departure from Singapore for Australia; statements made by D'Souza in Australia and New Zealand; the content of the press release or statement issued by D'Souza in Melbourne on 29 November 1987, and the attack on D'Souza by the minister in Parliament on 30 November 1987. Accordingly, when the first and second defendants received from D'Souza the press statement and the two documents — the three documents were faxed to the second defendant but I am sure that the first defendant must have been made aware of them and must have read them— they must have appreciated that what D'Souza wrote in the documents were highly critical of the plaintiff and his government. It must have dawned on them that D'Souza had a deep grievance against the government; that these documents were sent to them with a view to their writing and publishing a counter-attack on the government, and that the accounts given by him in the documents would not be objective or impartial and might well be materially untrue or inaccurate. In those circumstances, it would have been incumbent on them, before the article was published, to verify with D'Souza and other persons involved the facts on which the article was based. In so far as para 9 is concerned, the first and second defendants could and should have asked D'Souza who was the priest who was said to have made that comment and then verified with the particular priest whether in fact he actually said what D'Souza had reported. It must have occurred to them that that paragraph contained defamatory material. As for para 11, they again could and should have verified with the Archbishop and also the priest the allegations contained in that paragraph, and what exactly transpired at the meeting of 2 June 1987. No attempt, however, was made by either the first defendant or the second defendant or anyone on behalf of the third defendants to verify any of the facts or matters provided by D'Souza. Both the first and the second defendants just accepted the documents at their face value; the second defendant composed and wrote the article, and the first defendant approved it and its publication. The words complained of in both paras 9 and 11 (the latter excluding the last sentence) were untrue and defamatory. The material facts in the other paragraphs of the article were not truly and accurately stated. I have dealt with these at great length. Lord Diplock in *Horrocks* v *Lowe*[22] at p 150, said:

> Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, 'honest belief'. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true.

That precisely is the position here with regard to the first and second defendants: they published the words without considering or caring whether they were true or not; they were indifferent to the truth. In that sense, they acted recklessly. In my judgment, such conduct of the first and second defendants is evidence of malice on their part, and I so find.

(iii) Publication in the *Review* of 7 January 1988

On 7 January 1988 the *Review* published a letter purportedly to have been written by D'Souza in which he repeated what was said in paras 9 and 11. It was in effect a repetition or re-publication of the same libel complained of. This was relied upon by the plaintiff as evidence of malice against the defendants. I am unable to agree. At or about that time, there were letters in exchange between the *Review* and James Fu, the press secretary to the plaintiff, and the publication by the *Review* on 7 January was merely to demonstrate that their source of information came from D'Souza.

(iv) Nigel Holloway's employment pass

In early April 1987 the Controller of Immigration, Singapore, refused to grant an extension of the employment pass to one Nigel Holloway who had been working for one year in Singapore as the bureau chief of the third defendants. This, according to the plaintiff, angered the first defendant, who responded in an article published in the issue of the *Review* for 14 May 1987 in the column headed 'Travellers' Tales' in which he severely attacked the government authorities. This, Mr Previte submitted, was evidence of the state or attitude of mind quoad the plaintiff and his government. This submission is not without foundation. The article was a scathing attack on the government authorities; extremely strong language was used and, in one or two places, was almost vitriolic. The article was a lengthy one and covered extensive areas which had nothing to do with Nigel Holloway. There was a letter in reply to this article written by James Fu, the press secretary of the plaintiff, which was published in the issue of the *Review* for 28 May 1987. That, in turn, brought forth

another article written by the first defendant and published in the issue of the *Review* for 4 June 1987 again in the column headed 'Travellers' Tales'. That article was not only a reply to James Fu's letter but also once again an attack on the plaintiff. These two articles showed extreme anger entertained by the first defendant, which was wholly antagonistic towards the plaintiff and his government. They were written at the time contemporaneous with the events with which the article was concerned. The material from D'Souza about six months later provided him with an opportunity to publish an article derogatory of and denigrating the plaintiff and his government.

(v) D'Souza's reply to the minister

The minister made his attack on D'Souza in his speech in Parliament on 30 November 1987, and nothing in relation to the speech was published by the *Review* in its issue of 10 December 1987. It was submitted by Mr Previte that the real reason for the publication of the article in the issue of the *Review* for 17 December 1987 was not to facilitate a reply by D'Souza but to publish something which was of a 'sensational nature'. D'Souza had furnished the second defendant with the background document which was a 'journalistic scoop', and the publication of D'Souza's reply in paras 4 and 5 of the article provided the first and second defendants an opportunity to describe the meetings of 2 and 3 June 1987. This submission again is not unfounded. First, the press statement and the other documents faxed to the second defendant by D'Souza certainly provided the first defendant and the second defendant with the material for an article. Secondly, a substantial part of the article was devoted to describing the meetings on 2 and 3 June 1987 and that part had no connection with and was unnecessary to the reply by D'Souza to the attack on him by the minister. The article, in effect, resurrected the meeting of 2 June 1987 long after it had ceased to be an issue in Singapore. Thirdly, it is highly significant that these two defendants had never raised a word of the defence of a reply to the attack until August 1989 — about one month before the commencement of the trial and some 18 months after the article had been complained of. All these cast doubts on the bona fides and genuineness of the defence of facilitating the reply by D'Souza. In my judgment, in the absence of explanation by the first or second defendant, these facts cogently point to the state of mind of these two defendants in publishing the article, ie that they were antagonistic to the plaintiff and his government. These facts are evidence of express malice on their part in publishing the article.

(vi) Slant in the article

Mr Previte complained that the second defendant in composing the article from the material supplied by D'Souza had slanted a considerable portion of it to make the whole article more against and more adverse to the plaintiff. To make good his complaint, he took me through paragraph by paragraph a substantial part of the article and compared the contents thereof with the corresponding parts of the background document of D'Souza and demonstrated to me the changes the second defendant had made and the interpretation of the facts he had given in the article. Of course, I do not expect that the second defendant in writing the article would or should follow word for word what D'Souza wrote; obviously the second defendant wrote it in his own individual style and could not write it in the same manner and use the same words and expressions as written by D'Souza. However, making all necessary allowance for changes in literary style, and for other necessary changes, I find, on a totality of the changes made and the interpretations given by the second defendant, there was a significant slant in the article against the plaintiff. Neither the first defendant nor the second defendant — particularly the latter — has come forward to explain why the article came to be written in the way it was written. In the absence of such evidence, I can only say that their motive or intention was to make the article more anti-plaintiff and more adverse to and critical of him.

(vii) Publication on 23 September 1989

Two days before the commencement of the trial, the third defendants published a press release entitled 'Press release on Lee Kuan Yew's defamation case against the *Far Eastern Economic Review*'. It is not clear who wrote the release but clearly it must have been authorized and approved by the first defendant and probably also the second defendant. It was written in very tendentious language, and said, amongst other things.

> The *Lee Kuan Yew* v *Review* case makes an important new stage in the Singapore government's campaign against the foreign press. Not content with restricting the circulation of the *Review* to a negligible number, he has sued for defamation — in Singapore. He will be asking Singapore judges to award him damages for the slight on his reputation allegedly contained in a report quoting a priest who said he thought Lee was attacking the Church and putting pressure on the Archbishop.
>
> The *Review*'s defence is that the story was true, and the opinion expressed by the priest was honest. In addition, it will argue two important press freedom defences: that the press is entitled to carry the reply of individuals personally attacked by powerful governments, and that the Prime Minister and other public figures must be prepared to suffer honest criticism in the media.

Attached to the press release were what the *Review* termed 'background material' and a copy of the article. This piece of sensationalism is unfortunate. The publication repeated the libel two days before the trial. With audacity it re-asserted the defence 'that the story was true and the opinion expressed by the priest was honest'. As I have held, the defendants have not succeeded in proving justification; nor have they succeeded in showing that the words complained of in para 9 were expressed by any

particular priest. The other part which is also highly objectionable is the statement that the plaintiff's claim in this action is 'a campaign against foreign press' which by implication means that the plaintiff does not have a genuine claim and is abusing the process of the court. This publication reinforces my finding that the first and second defendants were actuated by express malice at the time of publication of the article.

In conclusion, on the materials before me, I find that the first and second defendants were actuated by express malice in the publication of the article. Accordingly, the third defendants are affected by the express malice of the first and second defendants; they are vicariously liable.

I now come to consider the fourth defendants. They are the printers and were not involved in writing or editing the article. Mr Previte, however, submitted, and I agree with him, that the fourth defendants printed the article without verifying whether the contents thereof were true or false. This is evident from the letter which their solicitors wrote to the plaintiff's solicitors on 30 December 1987. In that letter they said, amongst other things:

> As you know our clients are printers for the Far Eastern Economic Review Ltd ('FEERL') and have no control over the contents of the magazine printed by them. Our clients are also not in a position to verify the contents of any article in the magazine, including the article complained of in your letter of 26 December 1987.
>
> Our clients are therefore seeking clarification from FEERL on the matter.
>
> As you will appreciate, it is not possible for us or our clients to take a definitive view of the matter without obtaining the necessary information from FEERL. Further, we should inform you that under the terms of our agreement with FEERL, our clients are obliged to seek the consent of FEERL should they decide to settle any claim, demand or cause of action brought by any party arising out of any copy of the magazine printed by them.

As can be seen from the letter, there was an agreement subsisting between the third and fourth defendants whereby, presumably, amongst other things, the former would indemnify the latter against all liabilities arising from printing the *Review*. It is obvious that the fourth defendants as printers rely wholly on the agreement made with the third defendants and are bound by the agreement they have made. In effect, they have by agreement abandoned any attempt to exercise control on what they print. Wholly for commercial reasons, they have tied themselves to the publishers, and that is the way they choose to conduct their business. In that situation, they have put themselves in the shoes of the publishers and must stand or fall with the publishers. Further, in consequence of their agreement with the third defendants, they had no control over the contents of the magazine printed by them and were not in a position to verify the contents of any article in the magazine. In that sense, they printed the article, without considering or caring whether it was true or false; they were indifferent to the truth. They are equated with a publisher who publishes materials or articles without considering or caring whether they are true or false. In that sense, they acted recklessly. In my judgment, for the reasons I have given, the fourth defendants were also actuated or affected by express malice.

Damages

All the defendants are liable in damages. As a general rule, damages are to be awarded on a compensatory basis. Paragraph 18.03 of *Duncan and Neill on Defamation* (2nd Ed) states:

> The basic rule of common law is that in civil actions damages are awarded as compensation for injury, not as punishment for wrongdoing. Accordingly, in most actions for defamation, the damages have to be assessed on a compensatory basis.

As to the matters which ought to be taken into account in assessing damages, they have been fully set out in para 1451 of *Gatley on Libel and Slander* (8th Ed), the relevant portion of which is as follows:

> The amount of damages is 'peculiarly the province of the jury', who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and 'the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. This may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action', and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. ... They should also take into account the evidence led in aggravation or mitigation of the damages.

I now turn to the relevant facts before me. Both paras 9 and 11 are grave libels on the plaintiff and cast serious imputations on him as a man and as the Prime Minister of Singapore. The imputation in para 9 is plainly more serious than that in para 11.

The libels appeared in a reputable and influential publication with worldwide circulation. The *Review* is not a sensational daily newspaper; it is a weekly periodical and is read generally by people in the business and financial communities and the intelligentsia. As shown by the particulars supplied by the defendants' solicitors, the *Review* had circulation in Hong Kong, the Asean countries, England and Japan.

There has been no apology for or retraction of either of the offending paragraphs. These two paragraphs were repeated in the issue of the *Review* for 7 January 1988. The defendants however did publish the two letters written by James Fu in the issues of the *Review* for 24 and 31 December respectively.

Mr Previte asked for aggravated damages. In view of my finding of express malice, the plaintiff is entitled to such damages. The other aggravating factor is the conduct of the defendants through their counsel in repeatedly attempting in the cross-examination to put to the plaintiff matters which have no relevance to the issues; their counsel have persisted in that line of cross-examination on several occasions. The line of cross-examination, Mr Previte submitted, exacerbated the hurt to the plaintiff's feelings and the damage to his reputation, particularly in this case which has received extensive publicity. Mr Previte listed out no less than 24 instances of the cross-examination in which questions were disallowed on the ground of irrelevancy. In addition, there were numerous instances where questions put to the plaintiff were calculated to be offensive and to increase the hurt to his feelings. In my judgment, such conduct is a relevant aggravating factor.

There is one other aggravating factor which, but for the fourth defendants, I would have to take into account, and that is the publication of the press release by the third defendants on 23 September 1989 to which I have adverted. The fourth defendants had played no part in the publication. As I have to award a single global sum for the libels against all the defendants as joint tortfeasors, a sum which any of the defendants can be held liable, this event of publication has to be disregarded as an aggravating factor. As an authority for this I need to quote only the following passage from the speech of Lord Hailsham of St Marylebone LC in *Cassell & Co Ltd* v *Broome*[23] at p 1063:

> I think the effect of the law is exactly the opposite and the awards of punitive damages in respect of joint publications should reflect only the lowest figure for which any of them can be held liable. This seems to me to flow inexorably both from the principle that only one sum may be awarded in a single proceeding for a joint tort ... I think that the inescapable conclusion to be drawn from these authorities is that only one sum can be awarded by way of exemplary damages where the plaintiff elects to sue more than one defendant in the same action in respect of the same publication, and that this *sum must represent the highest common factor, that is, the lowest sum for which any of the defendants can be held liable on this score*. Although we were concerned with exemplary damages, I would think that *the same principle applies generally and in particular to aggravated damages*, and that dicta or apparent dicta to the contrary can be disregarded ...
>
> Plaintiffs who wish to differentiate between the defendants can do so in various ways, for example, by electing to sue the more guilty only, by commencing separate proceedings against each and then consolidating, or, in the case of a book or newspaper article, by suing separately in the same proceedings for the publication of the manuscript to the publisher by the author. (Emphasis added.)

I have been referred to the following cases: *JB Jeyaretnam* v *Lee Kuan Yew*[24] and *Lee Kuan Yew* v *Seow Khee Leng*[25] where substantial amounts of damages were awarded to the plaintiff. Of course, in each of those cases, the defamatory statements were entirely different from those before me; hence at most they serve merely as illustrations of the amounts awarded.

Having taken into account all the relevant matters, including the aggravating factors, I think that a fair and reasonable sum as damages for the plaintiff is $230,000. There will therefore be judgment for the plaintiff in that sum together with interest at the rate of 6% pa from 31 December 1987 to the date hereof. I also grant an injunction against repetition of the libels as claimed. On the question of costs, the plaintiff has succeeded substantially on all the issues and is therefore entitled to full costs of this action, and I so order.

Order accordingly.

Solicitors: *Lee & Lee; Murphy & Dunbar.*

Reported by *Terence Tan Bian Chye*

Chong Peng Han & Ors v Chong Toh Jin & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 258 OF 1987
CHUA J
31 JULY 1989

Succession — Will — Construction of — Application to court to interpret will — Time period for contingency to occur to give effect to the gift over

The plaintiffs are grandsons of the testator, and by the present originating summons, sought directions of the court as to the construction of their grandfather's will. The first and second defendants are the executors of the will. The clause in the will which was sought to be construed was cl 6:

'I give... my freehold land and house... unto my trustee upon trust that is to say:

(a) That Chong Che Cheng & Co Ltd shall subject to the provisions hereinafter... be entitled to occupy the first floor of the trust premises during the lifetime of my youngest grandchild. After my youngest grandson becomes 21 years, if Chong Che Cheng & Co Ltd shall continue the first floor and the joint tenants agree to let, then Chong Che Cheng & Co Ltd shall pay an agreed monthly sum to the joint tenants...

(b) My wife... shall during her lifetime be entitled to reside ... on the ground floor of the said trust premises.

(c) Within 12 months from my date of death, to convey back... the said trust premises unto my grandsons Leong, Tiong and Choon who shall thereafter become joint tenants of the trust premises. If Leong shall predecease the others, my grandsons Han, Kiat and Hong shall be joint tenants of the trust premises.'

Chong Che Cheng & Co Ltd was wound up. Later, the testator's wife died. The youngest grandson at the death of the testator was